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ABSTRACT

The Program for Educational Opportunity, an institute based at the University of Michigan and established by the Office of Education pursuant to Title IV of the 1964 Civil Rights Act, is designed to assist school districts in the process of desegregation. The Program annually conducts a series of conferences. The Conference on Developments in School Desegregation and the Law, held May 17-19, 1972, was designed to provide an overview of developing educational and legal principles. The following papers are presented in this document: "Unconstitutional segregation and court ordered desegregation," J. H. Flannery; "Racial imbalance and State desegregation standards," R. Lyons; "Drawing up desegregation plans: the steps, data and resources required," C. Glatt; "Busing and metropolitan desegregation," J. H. Flannery; "Voluntary vs. involuntary desegregation," J. Cochran; "Assisting equal educational opportunity," C. B. Vergon; "Hiring and retaining minority personnel; legal and practical analysis of permissible practices," A. J. Howell and J. Luck; "Integrating the desegregated school," N. Sullivan; "Achieving effective desegregation: a handbook," A. Smith, A. Downs, and M. L. Lachman; "Ability grouping: status, impact, and alternatives," W. G. Findley; and, "Discipline in desegregated schools," L. Bobbitt. (JM)

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Proceedings of Conference

on

DEVELOPMENTS IN SCHOOL DESEGREGATION AND THE LAW

Editors

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PREFACE

The Program for Educational Opportunity is a university-based institute designed to assist school districts in the process of desegregation. The Program, based at the University of Michigan, was established by the U.S. Office of Education pursuant to Title IV of the 1964 Civil Rights Act.

Besides providing in-district services on request and without charge to public schools in the six state region of Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin, the Program annually conducts a series of conferences. During the spring and summer of 1972, four conferences were held at the University of Michigan in Ann Arbor, covering topics of critical importance to school board members, administrators, teachers, students and community. These conferences were entitled:

Developments in School Desegregation and the Law

The Personnel Director in the Desegregation Process

Multi-Ethnic Curriculum and the Changing Role of the Teacher

The Role of the Principal in the Desegregation Process

The Program has transcribed or received written copies of the major presentations from each conference and is making them available to anyone interested in the pursuit of equal educational opportunities.

To the consultants from professional associations, governmental agencies, university communities, and practicing educators and attorneys, the Program expresses its appreciation for their sharing of experience and dedication to the proposition of equal educational opportunity.

Special appreciation is due Dr. Wilbur Cohen, Dean of the School of Education, for his continuing interest and support of the Program; and Henry Johnson, former Associate Director of the Program and now University Vice-President for Student Services, for his participation in the development of the conference series.

Finally, contributions of the below listed individuals responsible for the planning and coordinating of the conference series and these proceedings are acknowledged.

Dr. Charles D. Moody, Sr., Director

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INTRODUCTION

The Conference on Developments in School Desegregation and the Law held May 17, 18 and 19, 1972, was designed to provide an overview of developing educational and legal principles.

Major divisions of the Conference were devoted to the legal authority and obligation to desegregate, the old and new means of desegregating, the need for policies complementary to desegregation, and integrating the desegregated school.

DEVELOPMENTS IN SCHOOL DESEGREGATION AND THE LAW

Consultants

Leslie Bobbitt	Assistant Superintendent of Charlotte-Mecklenburg, North Carolina Schools which were ordered desegregated by the U.S. Supreme Court in 1971.
John Cochran	Superintendent of Kalamazoo, Michigan Schools at the time voluntary desegregation plan was adopted and subsequently rescinded by board decision.
Warren Findley	Principal investigator for Ability Grouping 1970 and professor at the University of Georgia.
J. Harold Flannery	Former Justice Department attorney, now Deputy Director of the Harvard Center for Law and Education and of counsel in the Detroit litigation.
Charles Glatt	Demographic specialist and Director of the Midwest Desegregation Center at Ohio State University.
Larry Hillman	Professor at Wayne State University with extensive experience as desegregation consultant including multi-district plans.
A.J. Howell	Employment practices authority with the Office of Civil Rights, Washington, D.C.
Jerry Luck	Trial attorney concerned with employment practice. Office of the General Counsel Department of Health, Education & Welfare.
Robert Lyons	Director of EEO, Illinois Department of Instruction, and responsible for the implementation of state desegregation standards to eliminate racial isolation.
Norman Scherman	Superintendent of Hempstead, N.Y. Schools which are now contemplating a multi-district desegregation plan.

Neil Sullivan	Massachusetts Commissioner of Education and Superintendent of Berkeley, Calif. and Prince Edwards County Virginia Schools at the time they were being desegregated.
Charles Vergon	Assistant Director of Program for Educational Opportunity, a title IV institute at the University of Michigan.
Dana Whitmer	Superintendent of Pontiac, Michigan Schools which instituted a desegregation plan this year pursuant to a Federal court order.
Ben Wilson	Director of Title IV Desegregation Institute at National College of Education, Evanston, Illinois.

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Leslie Bobbitt

Left: A panel composed of superintendents and P.E.O. staff discusses voluntary vs. involuntary desegregation. Below: Participants listen to remarks made by Mr. Nick Flannery, from the Harvard Center for Law and Education.

Photographs by Christella Moody

LEGAL AUTHORITY AND OBLIGATION TO DESEGREGATE

UNCONSTITUTIONAL SEGREGATION AND COURT ORDERED DESEGREGATION

J. Harold Flannery*

I am delighted to be here and to see some old friends and I hope make some new ones. Educators have observed that courts and judges, with respect to school desegregation, tend to "do their thing" and then leave town, and the educators are left with what they regard as "the problem", i.e., what judges often characterize as the "opportunity of desegregation". As you may have observed in your program that is not my option on this trip. You will have at me not only this morning (I hope), but tomorrow as well, so I'll try to mind my P's and Q's and be a gracious guest, and I'll try to deal cooperatively with these questions with your assistance.

It seems to me, first, that there are a variety; I've looked at the agenda and it's an ambitious one, there are a variety of issues which we'll be talking about during the next couple of days, and there are a number of issues that I'm very happy to talk about because they are so topical.

Mr. Flannery, a former Justice Department attorney with the Civil Rights Division, is now Deputy Director of the Harvard Center for Law and Education where he continues to play an active role in desegregation litigation across the nation.

Bill Grant of the Detroit Free Press is among us and he tells me that the House and Senate conferees have within the past several hours reached some sort of agreement on an anti-busing moratorium, presumably under the rubric of the so-called Equal Educational Opportunities Act. It's very tempting to talk about that piece of legislation, perhaps we should, but as the as the hours go on it's also tempting to talk about state law developments.

With us in addition to the Michigan Title IV personnel are Illinois personnel, Bob Lyons and his staff; as you may know the superintendent in Illinois has issued what, I regard as, at least, as very creative, genuine, serious-minded school desegregation regulations. And that, in tandem with some recent court decisions, particularly in California, suggest to me that that's another area we ought to be talking about, i.e., where the states are going and where the states may take up what appears to be the national slack, if you will.

NORTHERN DE JURE SEGREGATION

But I'm going to postpone such issues because I'd like to discuss with you some more primitive or more elementary or more basic concepts that I think are important to a framework of what we're going to be doing for the next two days. I would like to lay down the principles if you will, to lay them on you, not so much because they may be unfamiliar to you. On the contrary, in many instances they are familiar to you, but

I think we ought to be certain to operate in the same framework. For that reason, I would like to discuss with you what principles underlie the relatively recent notion of northern "de jure" segregation.

It's now archaic to say, as writers and educators did in the 1960's, that southern school segregation, because it was the product of racially explicit state law, was something called de jure, therefore illegal and therefore required to be remedied, whereas northern school segregation, however educationally lamentable, was de facto or innocent or the product of social forces beyond the control of responsible school authroities, and therefore beyond the reach of the law. We take as our starting point that in approximately a dozen northern cases from West to East, Pasadena, Oxnard, and San Francisco, California, Las Vegas, Nevada, Denver, Colorado, a number of cases in Illinois, principally Madison, St. Louis, and South Holland, a number of cases here in Michigan, principally Benton Harbor, Detroit, and Pontiac, and a New York case, New Rochelle. In those and other cases, the courts have found that northern segregation is not in fact, in actuality the product of innocent or uncontrolled social forces that happen coincidentally to coincide at some point.

Moreover, this does not represent a change in the law (although it may represent increase judicial sophistication); on the contrary, judges are discovering with the help of lawyers what Black people have known in this country for long before these northern cases began to be decided, that most of the existing racial isolation, separation of pupils and teachers in our northern systems is in fact the product of readily quantifiable, observable, empirically demonstrable forces more often than not involving school authorities; and consequently the fact that there are not racially explicit northern state laws, or that in some of our states laws have been enacted which explicitly condemn educational racism, have not deterred many school boards from practicing discrimination in education. School board practices and other institutional and quasi-institutional forces that can be measured upon careful scrutiny have, in fact, brought about the existing racial separation. So I suggest to you that, to the extent that plaintiffs' energy and resources permit, this is a finding that will be replicated across the country. I want to suggest to you that there is hardly a school system in the United States in which given adequate time, energy, and resources, de jure segregation, that is illegal segregation resulting from observable practices, can not be proved. And that brings me up to where we begin our analysis.

FACTORS OF ILLEGAL SEGREGATION

What factors, what practices, what phenomena have the courts looked at in the northern school desegregation cases to find de jure, that is, official and therefore illegal segregation. Let me note here that the practices we're going to discuss now do not appear in the same form in every decided northern case. There are a number of ways, indeed it's a tribute to the ingenuity if not the good sense of man, that there are an infinite number of ways in which kids can be segregated in schools, and not all systems have had to hit upon every one of the devices found in all of the northern cases collectively. Usually present is some combination, more that episodic, more then coincidental.

Faculty

The first factor the court looks to is often faculty and staff with respect to recruitment, hiring assignment, reassignment, promotion and dismissal. It is often the case in northern school systems that minority faculty and staff members, Black, Chicano, and others are located and assigned disproportionately to schools attended disproportionately by minority kids. The court concludes that that is a de jure violation itself; and secondly that it is evidence, that it's a tipoff to the fact that what the school system has been doing about assigning pupils may not be quite so innocent, and not quite so neighborhood-oriented, as one might otherwise believe. The court says, in effect, I know the superintendent and the school board have central authority over where teachers teach, so that if the system has a 25% overall Black teacher corps, but the X school, the George Washington Carver School, which is a 75% Black school just happens to have a 75% Black faculty, or the Robert E. Lee School across town, composed as you might imagine of all white kids has very few or no Black faculty members those faculty assignments are not accidental. That suggests to the court that, while kids may attend schools based on seemingly innocent criteria, such as where they live, teachers don't come that way. Teachers are assigned to schools, or in some school systems teachers operate on a self-selection process, one year in the desirable school and then you may opt out of that school to the school that you want to teach in, and of course it's by such processes that illegal faculty segregation comes about. Union contracts and tenure requirements must yield to constitutional imperatives. Teachers may not self-segregate any more than the school board may segregate them by assignment.

The conventional remedy for faculty segregation, staff segregation, is that the system must reassign its teacher corps so that each school in the system looks more or less like a microcosm of the system as a whole. With this arrangement, each school would have, give or take a few percentage points, approximately 25% minority teachers. And let me add here that, as we go through these specific items, I encourage you to ask any questions that you may have, express any disagreements that you might feel.

Pupil Segregation

The court next looks at the question of how kids got separated by race. Obviously, a system is racially balanced if the schools are roughly proportionate to the racial composition of the system as a whole. If you have a 25% Black system, or a 25% Chicano system, and some schools are drastically under that figure with minority kids, that's obvious statistical racial imbalance. The court doesn't know, however, whether that's de jure or illegal without asking certain other questions: how did the kids get there, what assignment techniques and practices are being used.

The following devices or practices have been focused upon as illegal.

Attendance Boundaries

Gerrymandering school attendance zone lines to effect racial segregation. Now it's very rare that a school board will conspicuously draw a line which separates neatly and precisely the Black neighborhood from the white neighborhood. But school systems have been know to operate schools in racially adjacent neighborhoods with one or more schools significantly under-capacity and other schools substantially over-capacity, perhaps even with portables added. Where such schools are serving racially different neighborhoods, the school board bears a very heavy burden of persuading the court that it drew the line where it did, or is failing to adjust the lines to reflect more comfortably what the capacity figures are in those schools, for nonracial reasons. The court's first question is, "Mr. Superintendent, if you were in a racially homogeneous district, you would not operate this school at 130% capacity and its neighboring school at 70% of capacity. It's educationally irrational. It occurs to me that race may underlie your decision or your failure to amend the decision previously made."

Optional Zones

Another phenomenon found in a number of northern systems is parent-pupil options or parent-pupil choice, with respect to attendance zones, free transfers and so-called open enrollment. Boston, Massachusetts, in my judgment, exemplifies this phenomenon to a fare-thee-well. Boston, at this time, to this day, has an open enrollment system whereby kids may choose out of the school which they would normally be assigned on the basis of where they live. The ostensible purpose of the program is to let Black kids opt into white schools and white kids opt into Black schools. Of course, the school system knows well what's actually happening is that white kids who are living in mixed neighborhoods, or transitional neighborhoods, are opting out of the desegregated school into whiter schools elsewhere in the system. (At least hypothetically, this is also giving Black kids an opportunity to avoid desegregation by opting out of a desegregated neighborhood school into a Black school.) That kind of pupil-parent choice arrangement, unless it is educationally supported by some form of rationale that I've never heard of, violates the Constitution where it operates in the way that I've described.

Transportation

Another phenomenon that occurs in some northern systems is racially separatist pupil transportation practices. Northern systems doing overlapping racially dual transportation routes are virtually unheard of, as far as I know, but what often happens is that some kids must be transported from their nearest school to relieve overcrowding, the over-capacity problem. Some systems, and Judge Roth found this to be a practice in Detroit, have transported such kids past a school with space that is attended primarily by kids of the opposite race to another school which is attended by kids of the same race. Similarly, some systems have picked up groups of kids, classes of kids, and transported them in tact with their teacher; thus a group of white kids will be transported past the Black school with space to an all white school, and sometimes a group of Black kids and their teacher, usually Black, will be picked up and transported to a white school (which would seem to be constitutional), but there at the receiving school they are held as a subgroup, not integrated with the new school, there held as an identifiable subgroup within the receiving school. These kinds of transportation practices have occurred in the North and have been held unconstitutional.

Construction and Expansion of Facilities

A frequently found de jure violation relates to the construction of new schools, and the expansion of existing schools and the use of portables, for the purpose of enhancing or promoting or preserving segregation. If a school system has a choice between two sites, two equally viable sites educationally, and it chooses the site which is more segregated than the alternative, the school system must persuade the court that its choice was mandated by educational, rational factors and not racism. An outstanding example of this occurred in a border state city. That system had an educational regulation that every elementary school should be approximately 16 to 18 rooms. In the early 1960's long after the Brown decisions, the system found that it needed additional school capacity to serve adjacent racially different neighborhoods. Instead of following its own principles and building a 16 to 18-room elementary school, the system built two 8-room elementary schools, one in the middle of the Black neighborhood and one in the middle of the white neighborhood. When the judge asked, what happened to your educational principles about 16 to 18 room schools, and the system was required and unable to justify the racial effect brought about by its selection of that construction site, a violation was found.

Grade Organization

Another phenomenon that occurs, and HEW has recently alleged that Boston, Mass. has committed this de jure violation is as follows: Schools may be organized in various ways, 8-4, 6-3-3, etc. Probably you're all more familiar with the options in that regard than I am. But if a school system manipulates its grade structure, so as to promote or preserve pupil separation for educationally irrational or noneducational reasons, that's a de jure violation. I am familiar with a school system, and others of you may be also (I'm sure Bob Lyons is), a school system in which the superintendent recommended that, instead of running five K to 8 elementary schools in a twenty-five hundred pupil district, that the district should go to a middle school system, grades 6-7-8 and K to 5 schools. The school board rejected that plan, not for educational reasons but because it would have resulted in desegregation at a 6th grade level, because one of those elementary schools was 99% Black and the other four elementary schools were 100% white, and the school board's reasoning was: Kids are going to be desegregated when they get to 9th grade in the consolidated district that they feed into, and we're not going to have it before that time. What's said in that case is that, you can organize your schools any way you want to, but we're not going to permit you to make educationally irrational judgments on racial grounds. You must explain why you exercised that option which preserved segregation, or why you failed to exercise an apparently plausible option which would have had significantly different consequences.

Residential Segregation - Incorporation

We discussed a moment ago that it's illegal to build deliberately upon racially isolated sites. There's a related principle which I must be cautious about and characterize as emergent. I think that it is clearly articulated in Judge Roth's decision in the Detroit case. It's clearly articulated in the Norfolk, Virginia case. It appears in the Tulsa case. It's very clear in the Clarksdale, Mississippi case. These are four different judicial circuits but it may be premature to characterize it as a fixed principle because in the Charlotte-Mecklenburg opinion by the Supreme Court, the Court acknowledged the issue as a genuine one, but then backed off deciding it definitively. So until that court has spoken on these principles it is questionable whether they are immutable. But what the courts have said in the Detroit and other cases, is that it's impermissible for a school board to build blindly, naively, ingenuously, if you will, on the effects of residential racial segregation, where such segregation results from public or private racial discrimination.

In other words, school boards must be more than color blind to meet constitutional requirements. They must avoid building into the school system, incorporating into our public institutions, private racism and the avoidable effects of private prejudices. Now it's not difficult to prove that federal, state and local housing agencies, public housing authorities, and real estate boards and real estate association have done their part, with extraordinary effectiveness, to segregate us from each other on the basis of race.

FHA regulations, racially restrictive covenants going back many years have their persisting effects. Such covenants were declared illegal in 1948, but that did not end their legacy. Similarly, FHA regulations that survived until the 1930's and forties spoke of racially harmonious, homogeneous neighborhoods, and provided for the maintenance of "neighborhood integrity", which is a thinly veiled euphemism which everybody understood to be segregation. Public housing authorities, until the mid 1960's in many states, designated public housing projects for occupancy by race. A particular project would be designated for Black occupancy, or white occupancy. If it weren't designated for Black or white occupancy, it was only because it didn't have to be because it was built in an area of the city that had already been established by common understanding as for white or Black occupancy only. But when the school board comes along and builds a school to serve that housing project, it's a bit disingenuous to say that school is fortuitously all Black or all white. The board can not exclaim, "How did that come about? Look at what happened!" It was they who built a school that just happened to come out to the capacity figure of the housing project, e.g., if the formula was 3 1/2 kids per unit, that "turned out to be" the size of the school and "Guess what, we have de facto segregation."

Increasingly, courts are refusing to be so credulous. That is, in fact, institutional, public and quasi-public, racism, which school boards may no longer build in to their public institutions, their public school systems. They can't sit by and permit private racial decision-making to be incorporated into "public institutions."

Segregation Within The School

Another phenomenon which occurs, and the courts have found to be illegal de jure segregation, is segregated classroom assignments and intra-school racial segregation and discrimination. If I recall the program correctly, Dr. Warren Findley is on the program, and it would be very presumptuous of me to talk to you in any detail about tracking and grouping practices which sometimes result in intra-school segregation. But you should know that the courts have said that, tracking and grouping practices which result in segregation, must be justified on educational grounds by the school system, for the reason that racial segregation or discrimination are the frequent effects of such placement devices. Now, whenever that is the effect of a school policy, the law insists that educators justify them, i.e., demonstrate that they were educationally compelled and that the resulting segregation is just an unhappy, fortuitous consequence. My understanding is that, in fact, most tracking and ability grouping mechanisms that have that effect cannot be justified on educational grounds. That is, heterogeneous ability grouping is preferable for so-called fast achievers and vastly preferable, perhaps indispensable, for so-called slow achievers.

Recission of Plan

You should know further that several important northern cases, primarily Denver and Kalamazoo, Michigan, and to some extent Detroit, the courts have said that it's illegal for a school board to rescind or permit interference with, a voluntary desegregation plan in response to community hostility, or in the Detroit case, on the basis of interference by the state legislature. The court's reasoning is simple, it seems to me. The system may not have had an obligation to desegregate, to bring kids together, because prior to the time the school board adopted its voluntary plan for educational reasons, nobody had found the system to be illegally segregated. However, once the school system had decided to desegregate, or begun to march down the road of implementation, then a rescission of that plan because of community hostility or political disapproval, or for any other non-educational reason related to race, is a de jure violation. It's a public act. It's an official policy act, but for which kids would be going to school together irrespective of race, and the court say, "Mr. Superintendent, Mr. School Board, why did you rescind the voluntary plan?" And if the Superintendent says, "we rescinded it because I can't handle the community, your honor. The community is up in arms, has recalled my board, has threatened my job." At that point the court says, in effect, you must implement the plan because public policy may not be based on public prejudice. We can't do away with some less popular parts of the Constitution.

District Boundaries

Now it seems to me we're going to be talking about the following doctrine tomorrow when we come to remedies, i.e., that just as school districts may not manipulate attendance zones within the district, the courts are increasingly coming to the proposition that states may not manipulate the line of districts themselves. A school system may not racially gerrymander school zone lines to separate kids, and an emerging principle suggests that states may not manipulate the lines of districts, may not racially isolate whole districts, any more than districts themselves may racially isolate schools. Moreover, the state is the constitutional entity responsible for equality of educational and school systems are only their agents. The United States Constitution does not speak directly to school systems such as the Lansing school system. It speaks only to the state of Michigan (and others) and to the federal government. The state of Michigan is wholly responsible in a constitutional sense for providing equality of educational opportunity. So, if it has manipulated school district lines, or more importantly, if it has failed to adjust school district lines when it would do so otherwise, e.g., for economic reasons given racial homogeneity, or even would consolidate whole districts all other things being equal in racially homogeneous areas, then it must persuade the court that its failure to adjust school district lines in a way that would provide the desegregation component in equality of opportunity, is educationally motivated rather than racially motivated.

REMEDIES

Degree Of Desegregation Required

Let us turn next to question remedies. The southern cases hold that mandatory desegregation is the remedy for state - imposed segregation. (Now, the judge does ask, of course, what is educationally feasible, what is educationally sound?) That sounds simpler than it turned out to be in the law's development. It was not until April of 1971, in the Charlotte and Mobile cases, that the Supreme Court squarely and unequivocally articulated the relief standard to be "the greatest possible degree of actual desegregation." The Court disavowed racial balancing, but went on to say that any school that remains racially disproportionate to the entire system must be justified by the system as something other than a maintenance of prior segregation. Most educators and lawyers feel that racial balancing, by any other name, is what is required in those cases.

Now it is not entirely clear that that is what is required in northern school systems. President Nixon's view is that you measure how much of the existing pupil separation the school board was responsible for and how much is fortuitous, and you cure only the former and leave the latter because it's not a violation of the Fourteenth Amendment. I suggest to you that that is legally unsound, and that the majority of northern courts that have addressed themselves to the problem have not accepted that analysis; and there are a variety of reasons, it seems to me, for rejecting that analysis. They are first, that it's very difficult to quantify the segregationist effects of school board policies and practices going back over the years. It's very hard to say that those practices, those policies, produce this much segregation and no more; and there is no rational reason for placing the burden of proving such a quantification upon the proponents of desegregation. There's no reason to do that. A second reason to go for comprehensive relief is that it avoids resegregation. Our experience, and I'm sure you're at least as familiar with this phenomenon as I am, is that if you partially desegregate a school district, that is you desegregate some schools and leave within that school district other schools that are composed exclusively of one race, you've imparted to parents who want to avoid desegregation the message that there's a place within that district to which they may flee. There is a sanctuary. They may move their residence and avoid desegregation. Whereas if every school in the system looks more or less like the system as a whole, you have at least deterred that kind of intra-system instability which results from white flight within the system. And as I said earlier, at least hypothetically, the same effect would result from the Black flight on the part of Black families who want to avoid school desegregation.

These are, it seems to me, two of the primary reasons for comprehensive relief; it seems to me further, as I suggested, that increasingly the states are going to be obliged to provide the relief, to see to it that districts either do the job or get it done, or the states themselves will have to get it done. This is, of course, not only a question in Michigan today, but it has been a question in the Texas, South Carolina, Georgia, and North Carolina cases in the past, and the courts there, in effect, have said to the state education agencies, "you tell district X to come up with a comprehensive plan of desegregation, implement it by this September, or withhold state funds." Now, cutting off Federal monies under Title VI has not always been dramatically effective, although it has worked more often than not, but I know of no school system in this country that can operate wholly without state funds, and that's proved to be quite an effective device.

Available Means

Lastly, what must school systems do to achieve compliance with the Constitution? What techniques may be used: There are five or six of them and you're familiar with them, but let me just mention them so that they're out on the table for us. First, an integration-oriented redrawing of attendance zone lines. If adjusting my hypothetical line between the two schools, one over-capacity and the other under-utilized, will produce desegregation in an educationally sound, economically feasible way, then that's what the system must do. Systems have also been required to undertake contiguous pairing and groupings of schools, with or without structuring. School systems have been required to undertake revised site-selection and construction policies, including moving and making new uses of portables. School systems are permitted to use optional devices, that is, controlled transfers and majority to minority transfers. These and magnet schools are permitted only to the extent that they get the job done. Faculty and staff desegregation, as I described earlier, has been required. Pupil transportation has been required, and of course non-discriminatory reallocation of educational intra-district resources.

Now I want to sum up by saying that, as I read the Supreme Court to have said in the Charlotte-Mecklenburg case, not only must school systems use to desegregate whatever device that they found feasible to segregate (and the devices found feasible and educationally sound in order to segregate boggle the mind), but they must consider all other feasible techniques. Many of you know of the bus rides taken by children of both races, or more likely the walks undertaken by Black children, to preserve segregation in school systems (primarily) in the South. So if the standard of educational soundness were what has been undertaken to promote segregation, it would be "the sky's the limit." In practice, the courts have said, more simply, whatever educators decide is economically feasible (and that may necessitate the state and local financial authorities being ordered by the court to tax and spend) must be undertaken.

As some of you may have seen, just on Monday, the Supreme Court affirmed the Fourth Circuit Court of Appeals order that required the Norfolk, Virginia school system either to buy buses which it had never owned, or to subsidize the Virginia transit company, which wanted to go out of business, to the extent of keeping them in business for the purpose of school busing. So financial feasibility is not a limitation which can impair desegregation.

The second requirement is the plan be educationally sound. For example, bus rides upwards of two or three hours have been far from unknown in this country. (And I'm going to share with you just as a footnote some pictures from our booklet, Inequality in Education, which reflects how kids have gotten to school in this country for approximately the last 70 years; my favorite is a cable basket across the Salmon River which enabled pupils to avoid a 14 mile walk to a school district to a school in Idaho. Horse drawn wagons were common, as were carts.) But the question was not whether the two hour ride was unfeasible, the question was could it be managed within the limits of educational soundness. Was it preferable to holding class in a variety of living rooms, i.e., one-room schools. And the courts have said, basically, we're not going to listen to arguments about 40 minute bus ride being not feasible or educationally unsound. Experience shows that it presents no problem. To digress briefly, the President's legislation says that transportation has impinged upon emotional and physical and educational well-being; that's not the fact. No proponent of that legislation has been able to point to a single school district in which that's the fact. So if an educator will testify that the device chosen is educationally sound including an hour's bus ride, it's feasible. Grade reorganization is a educationally feasible, and that is what some courts have required and bear in mind that the court will think, will examine the analysis, will examine the question, in terms of results, not what the school board says is the best we can do given the circumstances.

CONCLUSION

So what I've tried to suggest to you first, are what constitutes illegal segregation in Northern systems. Has the law changed or have courts begun simply to look at school systems in a more sophisticated, more careful way? I think the answer is the latter. I've tried to suggest, secondly, that maximum feasible desegregation the greatest degree of actual desegregation that is practicable, is the proper remedial standard. And third, I've tried to suggest to you that a wide variety of reassignment mechanisms and devices have been traditionally sanctioned.

Lastly, I want to suggest to you and I don't know what this morning's legislation, or tentative legislation, provides, but lastly I want to suggest to you that only the political rhetoric on the national scene, and undoubtedly on the scene in many of our states, would suggest otherwise. The speaker before me mentioned that these in some respects are disheartening times, but don't lose sight of the fact that while the rhetoric goes on, for reasons of its own, school systems are proceeding under the constitutional requirements of the 14th Amendment. Most systems in which the courts have had an opportunity to take a close look, have found to be illegally segregated, have been required to desegregate. So I guess I'm saying "take heart; you have an important role in helping America to match its performance with its promises."

RACIAL IMBALANCE AND STATE DESEGREGATION STANDARDS

Robert Lyons *

As the Director of Equal Educational Opportunity, it was recognized that I have the responsibility for desegregating Illinois and Chicago. Some of my friends tendered me -- they have you, as well -- congratulatory regrets. They suggested this was a task to discourage either a fool or a courageous man, and they didn't identify what they thought me to be, a fool or a courageous man. But whatever opinion prevails about me, I'm particularly pleased to be associated with the office of the superintendent, and to be involved in an activity of educational change that I think is essential to our future.

I'm particularly pleased, too, to be given the opportunity to work with a delightful staff. I know that

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Mr. Lyons, as Director of Equal Educational Opportunity for the Illinois Department of Public Instruction, was instrumental in developing state desegregation standards for Illinois and now in their implementation.

you've heard much of that before. It's incumbent upon me that I not go any further before introducing them to you this afternoon. And so will you recognize Mrs. Virginia Geis, my administrative aide; and the gentleman who probably really gets the job done in Illinois, my deputy -- a gentleman who has been a school teacher, a librarian, a principal, a superintendent of schools and a public executive, and he's been at the county level as an assistant county superintendent and at the state level for five or more years -- Mr. Royce Derks. And again I should acknowledge the presence of some delightful people from the United States Office of Education. I should recognize Mr. Vince Birdin and Beverly Smith, among others. It is also incumbent upon me to express Dr. Bakalis's regrets on being unable to join us this afternoon.

Cicero noted some years ago that if truth were self-evident, eloquence would not be necessary. Then, still later, Oliver Wendell Holmes argued that eloquence might set fire to reason. I'm not certain this afternoon that I'm going to bring you any sort of truth or reason. It is my hope that I can share with you some of the experiences of one state, of the activities of one state, to let us see the approaches and the resolution of this problem, and in so doing, perhaps equip you with possible alternative approaches for the same problem, if you're confronted with that in your respective states. I think there is something within the framework of these concepts that you will find, a kind of program for your individual school districts.

In November of 1971, Dr. Bakalis, the Illinois Superintendent of Public Instruction, announced his intention to pursue an actively and firmly enforced program of school desegregation. He at that time issued a set of administrative rules which established the rules and procedures for that program. His authority to take this action was based largely on a state law that was at that time more than eight years old. On June 13, 1963, the Illinois State Legislature approved an act sponsored by Representative Charles Armstrong which amended the school code, providing as a duty of local school board the following points of responsibility, and I quote to you from that:

> "The school boards will as soon as practical, and from time to time thereafter, change or revise existing units or create new units in a manner which will take into consideration the prevention of segregation, the elimination of separation of children of public schools because of color, race, or nationality."

There can be little doubt that the Armstrong Act was designed to apply to de facto segregation. But in 1968 the constitutionality of that law was upheld in the State Supreme Court. It was noted that in the opinion of the court, unless the law were intended to eliminate the present de facto segregation, it would have been superfluous, because Illinois school authorities were already forbidden from separating or excluding school children on the basis of race or color, as early as 1874. And likewise, the 1954 Brown decision declaring that de jure school segregation by any state board should be held unconstitutional.

The test of the constitutionality of the Armstrong Act began in August of 1965, when the Illinois Division of the American Civil Liberties Union filed a suit against a school district -- Waukegan -- on behalf of four parents. Citing the Armstrong Act, the petitioners sought to require the Board to change boundary lines to bring white students from four surrounding all-white schools to Whittier Elementary School, which at that time was 85% black. The Board, of course, moved to have this suit dismissed. But in a series of decisions in 1966, the county circuit judges refused to dismiss the suit, ordered the school board to file a desegregation plan, and after the board failed to do so, required the implementation of a plan developed by the American Civil Liberties Union.

An appeal was immediately filed to the State Supreme Court, and on June 22, 1967, the Court declared by a 5-2 vote that the Armstrong Act was unconstitutional. The decision was based on the argument that the statute required a kind of racial discrimination in determining school attendance lines, and that racial discrimination for any purpose -- even benign ones -- was unconstitutional.

The justice who wrote the majority opinion also noted that the law was not sufficiently explicit in defining the school boards' responsibility, or in indicating when schools should be considered imbalanced, and he expressed concern for the effect of the act on the neighborhood school concept.

Later on, however, the Court agreed to reconsider its decision. I can't at this point in time identify for you what were the circumstances that brought about a reconsideration of the court action by the State Supreme Court. It nonetheless did, in fact, reconsider, and, on May 31, 1968, reversed itself in a 4-3 decision upholding the constitutionality of the Armstrong Act, and declaring that school district boundaries must be drawn to prevent racial discrimination.

The Court found that the question was not whether the United States Constitution required a local or state school board to actually undo de facto segregation, but rather whether it permits the voluntary local action designed to accomplish that task. It was noted that the state laws or administrative policies directed towards the reduction and eventual elimination of de facto segregation and racial imbalance in the schools had been approved by every high court in the nation which considered this issue. The states where such judgements had been rendered included Pennsylvania, Massachusetts, Nww Jersey, California, New York, and Connecticut. According to the Court, the test of any such statute is essentially its reasonableness. It cited for its own decision in a previous case betseen Chicago versus Vokes that neither the Fourteenth Amendment nor any provision of the State Constitution forbids legislative classification reasonably calculated to promote or serve a proper police-power purpose. Rather, they invalidate only the enactments that are arbitrary, unreasonable, and unrelated to the public purpose sought for the public interest, or those which, although reasonably designed to promote the public interest, effect classifications which have no reasonable basis and are therefore arbitrary.

In this case the Court ruled it could not be said that the legislature acted arbitrarily and without reasonable basis in directing the school board to take whatever action deemed appropriate to eliminate de facto segregation. The Court in this instance also found that the Armstrong Act contained sufficient standards for enforcement, even though it did not define the term race or color, and did not refer to other considerations traditionally relevant in determination of school boundaries, such as natural hazard, distance to be travelled, and the like.

It was decided that the undefined terms could be reasonably applied by school authorities, and provisions of the Act did not require the elimination or minimization of other important factors in the determination of school attendance areas.

That piece of legislation, I suggest to you, after existing for some eight years, was for all intents and purposes unimplemented. Some several years ago the office nonetheless sought under a State Superintendent -- who is now out of office -- to come by Title IV funds, and there was then the introduction into the State Department of the State of Illinois a Title IV E.E.O. Unit. I will not ask the individuals to identify whether indeed it was considered to be appropriate to fund such a unit so as to bring about a rather subversive act and activity upon the operation of the State Department. I would only note that they were particularly pleased to learn that the staff of the department of the State Office was going about the act of developing, or trying to develop, regulations or guidelines for the implementation of the Armstrong Act. I think it is safe to suggest that -- at least for Illinois -- if desegregation were to to be accomplished, it could not come in a piecemeal fashion, which has been the traditional approach in the early years in the South. That we have the statute, we have the authority, we need only implement it.

When Dr. Bakalis took office in 1971, he convened a second Citizens' Advisory Committee. That Committee was designed to recommend to the Department of the Equal Education Opportunity and to the Superintendent the specific procedure for the implementation of the Armstrong Act. Meeting frequently over a six month period, the Committee, diverse in its membership, diverse in its philosophical approach to its task, developed recommendations for its policy statement, for implementation procedures, for community research and for proposed legislation.

The Committee set itself a most ambitious task, the task of considering the definition of racial imbalance, or compensatory versus integrated education; the need and extent of community involvement; the requirements for successful desegregation plans; and enforcement procedures that might be brought to bear by the State. The Committee's efforts were considered and their recommendations were presented to the Superintendent in August of 1971, and they were accepted. The Superintendent instructed the staff of this department to immediately set about the development of rules and regulations -- rules and regulations that he, in turn, could file with the Secretary of State, and in so doing provide a standard where the rules have the effect of law. The elected State Officials in Illinois can file with the Secretary of State procedures and thus implement the existing legislation.

We then set about the task of developing those rules and regulations. And I say to you quite frankly that we were most fortunate in coming by the services of one J. Harold (Nick) Flannery throughout the early times, early stages of developing those regulations. I recall it as though it were yesterday. Nick Flannery was saying to me that, "Bob, if we're going to err, let's be sure we err on the side of caution. Let's develop a set of regulations that will be considered reasonable by all individuals, and it might be, coincidentally, that some day an individual called a judge may be determining the reasonableness of those regulations."

During the time of the development of those regulations, there were a mumber of things going on between the department and the Superintendent. Needless to say, having worked for a previous administration, we had to establish our credibility with him. This man, having just come off the campus of a university, having associated with individuals who were, if you will, of a different mind as regards the appropriateness of segregation, or desegregation.

Dr. Bakalis asked us to design, to develop, to to consider criteria, suitable criteria, for consideration of any desegregation plan. Without repeating what Nick has said to you this morning, that list of items that the courts have spoken to are the very same kinds of concepts we dealt with in determining the appropriateness of those regulations.

I think that you, as you think to move to state regulations and guidelines as you think to design plans in your local community, you should give some thought to the concepts expressed by Nick this morning. The concept of unified administration; equal facilities and programs for all individuals; equality and racially balanced facilities; non-discriminatory student assignments; no racially identifiable schools; all of these things that I think Nick referred to this morning in regard to Federal Court decisions were considered by us as having some appropriateness in the design of many of the regulations.

But beyond that we thought there was something more, and this, I admit, was a consequence of the State Superintendent's position. He declared that from his vantage point some of the more militant individuals in the country were suggesting that desegregation is not appropriate for the '70's; or if it is, it has to be implemented differently than in the previous ten years.

So all regulations had to meet, we felt, a second set of criteria. And any desegregation plan submitted to us -- and this is important that you understand, I'm being very careful in my remarks -- any desegregation plan then submitted to us as a consequence of those rules and regulations must concern itself in its comprehensive nature with the following concepts: (1) We believe all efforts should be made to involve the local community in the development of any program; and (2) There should be non-violence in that community -- the absence of any serious violence in the community or in the schools caused by desegregation. Serious violence for us is that which goes beyond the normal degree of personal physical contact typical of adolescents. And so we tell a community that in responding to our demand that it set up a desegregation plan, it must concern itself in the design of that plan with programs that will ensure a non-violent atmosphere.

We felt likewise that in the '70's and in the North, still another criterion should be non-withdrawal -- no marked or immediate long-run decline in the number of either white or black students attending the system after its desegregation plan had been implemented, as compared to what existed before. And again, we expect comprehensive plans in response to our regulations to deal with that kind of concept.

Likewise, the maintaining of a physical or financial support is a concern. We would hope that there would be no marked reduction in local public support for the school board issues or tax levies, and we would expect a comprehensive desegregation plan to, indeed, address itself to that.

Two other concepts are maintenance of academic achievements and a non-polarization of the community. We would hope we would not see any significant decline in the academic achievement levels of either white or black students in the system after desegregation as compared to what existed before. We think the school boards and administrators have the immediate responsibility to deal with that as well.

Now, I'm advised that you have in your possession, beginning on page ten, I think, the rules and regulations themselves. For those of you who don't have them, Mrs. Geis has for you additional copies. I'm going to end this very quickly by going over the regulations themselves, indicating to you what we are doing, and then I would invite any and all questions.

The most important concept that I would call your attention to is the concept of racial segregation and how in fact we arrived at a determination of whether or not a school is segregated. On page eleven, Racial Segregation: "If the total minority enrollment of an attendance center reflects a percent greater than 15% plus or minus the total minority enrollment of the school district as a whole, that attendance center is considered to be segregated."

My friends, I know you're very much aware of other standards in other states. Quickly, some of them are the 90-10 Ratio, the 50-50 Ratio, the Borough Ratio -- that employed in New York -- the District Ratio, and, of course, this approach, this criterion that we employ, and which is also used in California. It has been suggested that all these have their shortcomings, but at least for us this is the most appropriate at this point in time. This was the most appropriate means of determining segregation in attendance centers throughout the State and, most assuredly, a suitable main course for identifying an appropriate goal toward which the school systems could and should move.

The regulations, you will note, require a school district to reveal to us what efforts they have made since the passage of the Armstrong Act. What have been those efforts, what have been the results of those efforts? We ask them to identify to us what further efforts they propose to undertake to eliminate segregation. We ask them to identify to us a time table for the accomplishment of desegregation. All that is reported to us. That is coupled with the demographic data with regards to the racial distribution of the students and the staff of a given school district, which reveals to us the given situation.

We then, in turn, may go out and have a number of visits at that school. But after once having found that a district is, in fact, operating segregated attendance centers, we then put in writing to that district, specifying our objections to what's going on there, a letter declaring that they have ninety days to develop a desegregation plan and to submit that plan to our office for consideration. As Nick has put it, we set their clock ticking. At the end of ninety days, assuming that school and community are working in good faith, we can extend an additional ninety days. If at the end of one hundred eighty days, there are still some technical difficulties, we can, at our option or on their motion, extend that to another sixty days, or any portion thereof. But beyond two hundred forty days we will not go. And when we arrive at that point -- if for some reason we haven't been successful in arriving at a desegregation plan for that community, that school district -- we will, if necessary, halt all State aid to that school.

There are a number of things we require when, in fact, that school district receives that letter. We feel that desegregation is going to be as successful as the individuals who are involved, and those individuals who should be involved are those most directly affected by any desegregation effort. We mean most specifically then the students, the staff, and the parents.

We demand, among other things, that the school authorities, after receiving a letter of noncompliance, begin by (1) passing in board meeting a resolution of their intent to comply with the regulations themselves, and (2) immediately forming and convening an advisory committee -- hopefully a body of representative citizens -- which will be charged with some responsibility for the development of that desegregation plan.

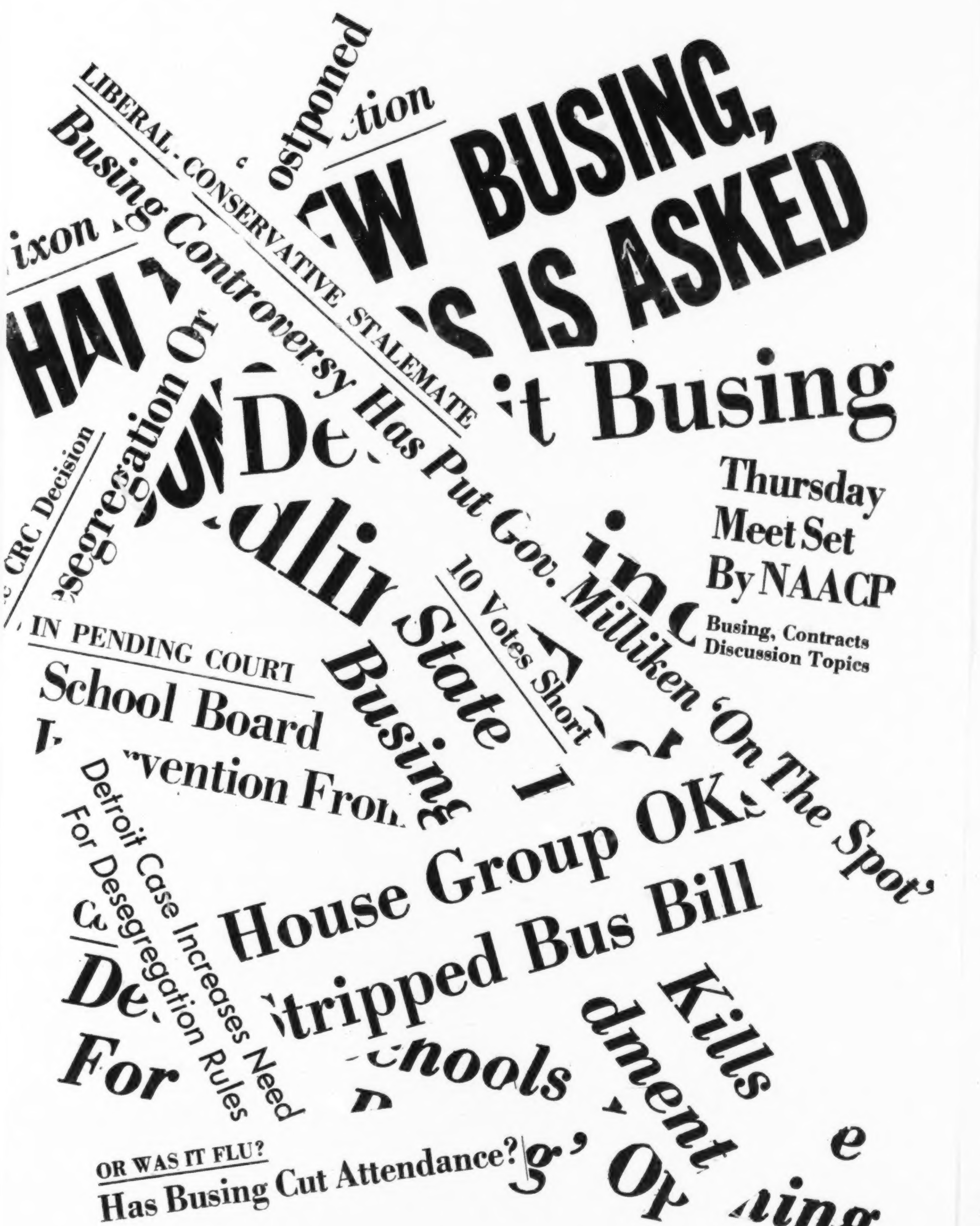
It has not been our custom to date, and I won't violate precedence here, to identify those districts which have been, in fact, ordered to develop desegregation plans in Illinois. Suffice it to say that more than a dozen have been cited, and still more will be.

The scenario of our activities is, I think, as you saw it going on ten or twelve years ago in the South. The same kinds of activities are to be found here in the North, in Illinois, in an effort to resist compliance. But I am exceedingly optimistic. I am particularly pleased about the success of the regulations, which we felt might have been challenged earlier in court. Perhaps it's the wisdom of Nick Flannery, as articulated in those regulations, that has resulted in those regulations' not having been challenged in court to date. Rather, if, indeed, there is going to be a loss of effort in Illinois of an opportunity to desegregate, it will probably come as a consequence of action in the State Legislature.

There has been introduced in more recent weeks legislation to repeal, or at least amend, the Armstrong Act. We're resisting; we're fighting. It was up in the House yesterday and it didn't pass, but we don't know how successful we'll be in the long run.

I think at this point I would like to clarify my remarks to you. I would not want you to consider Illinois as the be-all and the end-all. I am particularly pleased with some of the concepts and regulations and guidelines in the State of New Jersey and the State of Minnesota. Some facets of their programs are not to be found in our regulations.

For the first time in the State of Illinois, it is recognized that desegregated education, integrated education, is appropriate, and we've started to provide access to that kind of education.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OR WAS IT FLU?
Has Busing Cut Attendance?

MEANS OF DESEGREGATING -- THE OLD AND THE NEW

DRAWING UP DESEGREGATION PLANS: THE STEPS, DATA AND RESOURCES REQUIRED

Charles Glatt *

You know, I was riding in a car with a friend the other day, and we were trying to assess something of the national political situation as we were riding along. I, personally, am very pessimistic on the whole issue of civil rights and equalization of educational opportunity. You may have noted that it was exactly 18 years ago yesterday that the Supreme Court ruled in the *Brown* suit. It is on this 18th anniversary of that historic decision of the Supreme Court that we now get another 18 month delay -- an 18 month moratorium on busing from our Congress.

Frankly, I am getting discouraged. After eighteen years we shouldn't be here discussing how to begin desegregating schools. We ought to be glorying in the successes

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Dr. Glatt, Director of the Midwest Desegregation Institute and a professor at Ohio State University, specializes in demographic analysis and has assisted in the drawing of desegregation plans for a number of communities.

that we have had. But we haven't done the job and we haven't had those successes, largely because as a nation we haven't faced up to finding a method of getting children together so that they might learn to live with one another in a society while respecting each other as decent human beings.

Now let's look at some means, methods, ways of desegregating: the old and the new. I have worked with the old a lot in the last several years. To give an example, I was in a district in North Carolina about six years ago where we were doing a workshop similar to this one. But on the afternoon preceding that evening's in-service program, the word had just been received that HEW had not approved that district's proposed desegregation plan.

Imagine trying to conduct an in-service workshop with teachers the evening following that announcement, when everybody was wondering, but nobody would explain why the plan was not approved. The teachers just declared their own moratorium and said, "We're not discussing anything, Mr. Superintendent, until you tell us why the plan was turned down." That superintendent knew a revolution when he saw one, so he told them it had been turned down because the desegregation plan had been designed for Grades 1-7 and Grades 9-12 to be integrated, or desegregated at least, while Grade 8 had been left as it was, each color in a building all to itself -- one building was all white Eighth Grade, while another was all black Eighth Grade. And that was why

HEW had turned down the plan. And here's the thing that the superintendent hadn't wanted to admit, but which was finally forced out of him: the mayor's daughter, who was in the Eighth Grade, already had a reservation in a white "Christian academy" for Grades 9, 10, 11 and 12, and therefore had just that one last grade to get through in the public school. So, of course, the mayor was going to do his utmost to keep that grade lily-white for at least one more year.

Those are some of the old ways. I think, though, that it's time we started taking a hard, realistic look at something different from the old ways. Rather than just focus on the components of a model plan, I'd really like to talk this morning about comprehensive planning for change for all of our youngsters. One of the great tragedies of the Civil Rights Movement in America has been a misplacement of emphasis. We have always seemed to have the idea that we could correct our inequities by simply opening a few doors wide enough for minority citizens to sort of ease into the mainstream of American life. That's what Civil Rights has been about. Because of taking that stand, what we have done is to ignore the pollution and the poison in the mainstream itself, which is where we really need to start. We need to face up to the fact that one reason that black Americans are disenchanted with school integration is that when black children come into the white schools -- those idyllic white schools that they've heard about all their lives -- they find out how miserable that educational process is, too. It isn't what it is cracked up to be. I would like to think about the kind of comprehensive planning that creates a better educational system and more worthwhile learning processes for all the children who are involved, and for all the teachers who are involved, also.

I am acting as kind of a spokesman now, and what I am going to present is the work of several of us on our staff. What we're really about, as you know, is making moves in our schools, either from "dual school systems," as they have been labeled in the South, or from systems of "racial isolation" -- segregated school systems as they exist in the North. In the North in many districts where you have a small minority and racial insulation, we are talking about a set of conditions, either legal, or demographic, or residential, from where we want to move ultimately toward an integrated society. The big map over here, which took a thousand hours out of my life and 3,000 hours out of the lives of other people, really illustrates what I'm talking about in many of our northern cities. Each dot on that map represents either a Fourth, Fifth or Sixth Grade child in Dayton, Ohio, last year. The purple dots represent white children and the red dots represent black children; and if you don't think we have some racially isolated, racially insulated, segregated systems in the North, there is the best example that I know of to prove you wrong. I'll refer to this again later, but here's the name of the game we're trying to play. We are talking about educational change.

What we have tried to do in our Institute as a way of identifying the problems that we can anticipate running into, is to study the school systems which have desegregated or are somewhere in the process of desegregating, and to identify what we believe are those stages through which any district has to pass in order to make that trip we were talking about.

Initiation of Action

First, somewhere along the line somebody has to initiate some action. It's as simple as that. Somebody has to start something. Now let's see who some of the "somebodies" are. In the state of Pennsylvania, as in other states, the Human Relations Commission of the state can initiate action. Last year, before we were working in our Institute, I was over in Philadelphia, where they had that letter from the Human Relations Commission saying, "We want a desegregation plan and we want your timetable. Now get it done." They still haven't done it, but at least they have the letter; the action was initiated. Up until about a year ago, we found that the Department of Justice was often an initiator of action. (Now it seems, as I read in the papers about the Detroit case, that maybe the Department is on the other side of the fence.) The Office for

Civil Rights has initiated action in many cases. Individuals have also filed suits in many cases, or have gone to a board and said, "Look, we don't like the education our children are receiving, and we want some change. Please do something." I've even been in a few districts, but not many, where a superintendent was brave enough to present a set of recommendations to his board of education. I know of one case where the local Education Association, a professional group, went in and said, "We want some changes." You may have a citizens' organization starting the action, or the board may simply go ahead and do the job. You may get recommendations from the State Department of Education, as happened with Dayton last year, and so on down the line.

What I'm saying is, somebody has to start some action somewhere, and there are a lot of alternatives as to how that can begin. So what I'm really saying is that as you move from any one stage to another, you have several alternatives as to what can happen and how it can happen.

One reminder: a pupil locator map somewhere along the line is a must. You must have it before you can begin desegregating your school.

Now I'd like to take a quick look at some of the problem categories, since you will have problems at every turn, from any one stage to another. In one district a group of ladies might march out to Washington, while in another district you might have a group of people sitting in front of a school bus or presenting a list of demands; there are all kinds of alternatives.

Basic, of course, to all the problems, is the whole matter of racism. Let's face it, folks, a segregated society such as we have is perpetuated by whites because it is beneficial to whites, and it can only be corrected by whites. White racism is at the base of all of it, and gives rise to a large category of problems, such as community resistance and resultant lack of community preparation. I've known too many boards around the country whose members are so scared of community reaction that they want everything done in secret. I have been told so many times, "For God's sake, don't let the press know we are even meeting tonight. It'll be on the front page and destroy all of our efforts."

Another problem area is the legal issues that Mr. Flannery was talking about. We are still not clear on all of them. Some people, for example, think there really is a difference between de facto and de jure segregation, while others are convinced that there is not.

Lack of preparation of the part of professional staff is still another problem area. The white teacher who has never worked with black youngsters and the black teacher who has never worked with white youngsters will probably not be aware of certain kinds of sensitivities which may be unique to a certain group of children, and thus may blunder without realizing it.

Tied to racism, also, is the whole business of lack of commitment. Let's face it -- if just those of us in this room were really committed to the ideal of an integrated society, we could pull it off...if we really had that commitment.

Money, too, is a prime consideration. Tomorrow we will have Dr. Bill Self, from Charlotte, talking with us. I spent six weeks with the Charlotte-Mecklenburg system as that area was gearing up and implementing its massive desegregation plan, and I worked out of Bill's office for six weeks during that time. As I recall the figures, they had paid the external consultant who wrote their plan $1,800 in consultant fees. It cost them $30,000 to computerize classroom assignments, and at the last I heard the board had already spent over $150,000 in legal fees trying to fight it in court. It costs money.

Each district, of course, is unique. We can't get away from that, and that poses some problems, too.

Presentation of Evidence for Change

The next stage we see is that somebody has to present some evidence to somebody. Let's take a look at what kinds of evidence, and to whom it must be presented. First, there are some questions you need to look at. What kinds of data are most valuable if you are going to convince someone that change is in order? How far back into the past must you go in order to build a persuasive case to convince someone of the necessity for change? And who has the responsibility for obtaining the data? You had better decide and make assignments, so that you don't come up to the day when the action is supposed to begin, and find everyone saying, "Oh, well, I thought John was going to do it." No, John's off somewhere buying school buses. He didn't get that information. How do you go about obtaining the data? Who prepares the data? To whom are the data presented? These are just samples of the kinds of questions you had better face up to as you make any move at all in presenting the evidence that you have collected.

Well up until a year or so ago, you might have been talking about presenting your evidence to the Department of Justice. It may be that you're talking about presenting your evidence to the Office of Civil Rights. You may be talking about going into a federal court and presenting your evidence, or simply presenting it to that board of education. But you had better know to which person or to what body you are going to present the evidence, because that has a lot to do with how you prepare your data. You go out to some people and start talking about "chi squares," talking about analyzing data, and you're lost right there. Most Americans are not too comfortable with terms like mean, mode, percentage and ratio, so how do you present your data, and in what kind of form? Think about the alternatives, and consider well before you make your choice.

Development of Rationale for Plan

We see the next stage as the most crucial, and it is the one I am going to come back to and spend most of the time I have left talking about. This is the stage when somebody orders the development of a rationale for a plan for change. I think the thing that has impeded the desegregation of schools at least as much as anything else in the country is that too many people have not seen the distinction between 1) a rationale for a desegregation plan and 2) the desegregation plan itself -- the detailed plan, or the development of the rationale. While we're talking about the old and the new, let's take a look at what the rationale might be. The first thing I have listed happened in Little Rock back in the 1950's, when President Eisenhower had sent troops in to get some children into Central High School. As one reporter said, "Just get a few colored children into Central High School, and that's desegregation." That was the rationale, that was the plan -- that was the whole ball of wax. In all too many districts, that is still the thinking. Three years ago, I believe, I went to Houston, Texas. They wanted me to do a demographic study of the Houston school district, a design to show that they were already desegregated. I told them to convince me, to show me some evidence. And so I began to get the "evidence" from their school board attorney. You wouldn't believe what he tried to pass off as "proof of desegregation." There was one high school, for example, with 2,500 white youngsters and one black youngster. And he said, "That's 2,501 desegregated right there." Then they had an elementary school that was all black, but every other Thursday between 2 and 3 P.M. a white music teacher went there to teach. So that school was desegregated, too. I think this is the kind of thing, unfortunately, that the word desegregation has all too often meant in the past.

When you write up your rationale, you have to really think about it. Does your rationale mean that you're shootting for racial balance? Are you going to include teachers, too, in your plan for change? How about curriculum? Black studies? All minority contributions? Do you think this is part of a rationale for change? We say it has to be. How about some of the methods you are going to build into that rationale? Are you going to pair some schools? Are you going to cluster some? Gerrymander some? I am still convinced that in the northern cities of this country, simply by redrawing attendance boundaries, we could desegregate at least half of our schools. When you talk about alternatives to busing -- well, just taking a good look at those attendance lines is the best alternative I know. Part of the rationale, of course, might include some busing. (It's interesting to me, by the way, that no one objected to busing as long as we called it "transportation.") We recommend at this point, however, that instead of focusing on simply bringing black and white children or other children of other origins together, we really need to start to talk about planning for comprehensive change -- which includes just about everything that we do in our schools -- and we have come up with a tentative kind of list. Everything you do has to be involved: public relations, community involvement, student desegregation, faculty desegregation, administrative and auxiliary staffs, and so on. I have found so many superintendents who never stop to think, for instance, that the first person you see, the first point of contact that most people have with the public schools, is a secretary. That position is pivotal -- it's very important. One of the kinds of things we ought to be doing is to get our secretaries to do the kind of job they should. This is simply to point out that everything that goes on in a district should be involved in change. It's the old holistic view that you can't tamper with any one part of an organism without all of the organism being affected by it. Personally, I believe, as I review the history of education in the United States, that this is the best opportunity we have ever had to go ahead and desegregate schools effectively. If you have to change, why not do it right -- comprehensively.

Present Rationale to Officials

Now I'll move on to the next stage. Once the rationale has been developed and you can say that you are ready to propose to do something, the rationale must be presented to someone...if not to a board of education willing to take note, it may be to a federal court, or it may be to the Office of Civil Rights -- but it must be presented at this stage of development.

Development of Detailed Plan

After the presentation, hopefully, you move on to the next stage: you get an order (or permission) to go ahead and develop the details. I think the most frustrated people that I have worked with over the years have been those who -- whether they were superintendents, principals, teachers, or consultants -- have gotten together to draw up a detailed desegregation plan, only to take it to a board and have it turned down. They overlooked the fact that you need to get some feeling from that board as to what they will buy as your rationale. Go ahead and do all the work and be willing to run the risk of having your rationale turned down, if that's the way you want it. But we're saying that it will save trouble for you if you get some commitment first on what the board or the court will live with, before you start developing a detailed plan. Then -- once you have gotten that far, and developed that detailed plan, and put the timetable on it -- then is when you reach your problems. You'll get 30,000 phone calls the next day saying, "Where is my son going to school in September?" Charlotte-Mecklenburg had a whole telephone network set up just to handle those calls. But the operators couldn't really answer the questions, because they didn't have any idea where children were going to go to school. It all had to be worked out through the computer and all sorts of switches and changes had to be made before anyone could begin to answer any of those questions accurately. I will come back to talking about the kinds of details that can go into a plan a little later.

Acceptance of Plan

Once you have the plan detailed, then you have reached the stage at which you have to present it for final approval. Don't plan to take any detailed desegregation plan in, give it to the members of the school board (who might be hostile to begin with) on two hours notice, and expect them to vote on it at that evening's meeting. They won't be able to do it. Sometimes even one hold-back will be able to delay the action. We had one particular board member in one city where I was working, for instance, who always had an excuse for not voting on anything that he didn't particularly agree with or didn't want to be involved with. He would complain that he hadn't gotten enough information to vote intelligently or else say that he had so much information that he hadn't had time to study it enough. Now, I suspect every one of you has at least one person like that on your school board, so you had better give the board plenty of time to study the document so they understand it. One idea would be to have a study session with them, and have present some key teachers and key people from the community. And if you are the superintendent, you had better know that document by heart yourself, so that you don't stand there looking like a fool when the questions come. You had better know what is involved and be able to deal with all of the ramifications.

Implementation of Plan

Hopefully, if all goes well (and it hasn't gone well in very many cases), the seventh stage is to go ahead and implement your plan. Put it into action; go ahead and do the job. We have found that once this stage has been reached, most districts ease up and desegregation slowly begins to occur. Of course, many people will still spend a lot of time and money trying to get around the plan that has been worked out. In the Charlotte-Mecklenburg district, any number of parents rented apartments in another part of town from where they live. These apartments are empty; no one lives in them. The parents simply rented the apartments so that their children could give those addresses to the schools. Then the students could attend the school from that part of town, which is where the parents want them to go. All kinds of little gimmicks are involved, and there are all kinds of ways to skirt the issue, so if you just end the matter and say, "Well, let's go on to the budget," you really haven't done much.

Periodic Evaluation of Plan and Implementation

There are a couple of other stages along the way. Here is one that often gets overlooked: you have to have some form of periodic evaluation. You have to be able to say that you have accomplished what you set out to accomplish. Now let me throw one at you that has been a source of great misery to all of us. We educators have been severely criticized by people who say that standards are not what they used to be, that the quality of education has deteriorated, that test scores have gone down, that desegregation hasn't worked and that now we are getting a poorer product. I don't know how you deal with people who make these charges. But I do know how you protect yourself. You go right back to the development of the rationale for your plan. If some of your objectives are that you want test scores to improve and that you want performance skills to be better than they used to be, then you write those in as objectives in that rationale. Because when you start to evaluate, the only legitimate evaluation I know anything about is evaluation geared to those original objectives you set out to accomplish. But don't ever let people criticize you for not accomplishing something that you never said you were going to do in the first place.

Revision of Plan

This leads you then to what we would see as the final stage (although this whole cycle continues): revision. I have yet to see a plan that was perfect to begin with. Revision is always in order.

Conclusion

So, simply reviewing where I see us in comprehensive planning:

1. Someone must initiate the action;
2. Someone then must present some evidence that the plan is needed;
3. Someone must order development of a rationale;
4. The rationale must be presented to the authorities;
5. Someone must order development of the detailed plan;
6. The plan must be presented and accepted in its detailed form;
7. The plan must be implemented;
8. There must be some form of evaluation; and
9. The working plan must be subject to revision.

As you move from any one stage to another, we are talking about a lot of alternatives as to how each one can be accomplished -- alternatives in terms of people, presentations, preparation of data -- we are talking about all kinds of activities in which you must engage, and we are talking about problems. The sooner you begin to identify your potential problems and work out strategies for dealing with them, the better off you are.

Let me propose now that we take a five minute stretch, and then I'll open the floor to questions.

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Question: How long would you expect it to take to successfully implement a comprehensive desegregation plan?

Answer: Well, I hope that it would not take too much time, using the model that we have. I don't want another 18 years wasted. At the other extreme, however, I would rather that it didn't happen as it did in Winston-Salem, or Charlotte, or some of the other cities where I've worked. I was in a workshop two years ago in Winston-Salem, where the board had dragged its feet and dragged its feet until the judge finally said, "Do it right now." "Now," was January. I would rather that we didn't have to be rushed to the point where we had to disrupt a school year to accomplish the desegregation. I don't really know how anyone could go from the first stage, of someone initiating action, on to getting a rationale developed, to working out a detailed plan, etc., in less than a year. This should not keep you from going ahead and doing some other things, however. It shouldn't keep anyone in the comprehensive planning sense from going ahead with working on curriculum, or finance, or bringing in consultants. One of the most important and beneficial things that you can do is to bring in people to talk to you who have already been through the desegregation process. Bring in a couple of people, preferably a board member and an assistant or a superintandent, and have them spend several days with you working with you as you plan, pointing out possible pitfalls or good approaches. Take a look, with them, at your board of education policies and put stars or marks or something by those policies which should never have been there in the first place and which you know will not work when you are desegregating your school system. Have someone go through your administrative procedures manual and begin looking at the things that you can't do any longer. So I'm saying that if you begin some action in the month of September, you can have the idea in mind that, if you really work at it, you will probably have people actually ready to move by the following September.

Question: Has anybody tried to accomplish desegregation by changing the system to one of open enrollment and having different kinds of schools with the accent on different programs, so that the kids could choose where they wanted to go on the basis of what was offered -- so that there would be one school where you would go to do more dramatics, and one where you would go to do more science, and one where the accent would be on something else, and so on?

Answer: Yes, that's been done. I was talking to a superintendent who is here from Hempstead, New York, where they are doing some of that. But let me throw out something, though. There are a couple of things that bother me about the approach you are talking about. One thing is that when we talk about comprehensive planning, we ought to be doing all these things. The other is that when you talk primarily about building good programs, and you pick and choose who goes where and for what, it's pretty easy for the thing we set out to do to get lost in the shuffle. We can get so busy doing the other things that we wind up not really desegregating. I'm not too familiar with the Memphis, Tennessee, case, but I understand that one thing that they were proposing there was built on this concept of diversification. Their plan was to have special schools, to provide supplementary programs, and to plan field experiences; but not to desegregate schools.

Question: Does that really matter, if the students are going where they want to go and doing what they want to do, and the races may be interacting with each other or not, just as it happens?

Answer: I think it matters, because unless the desegregation is built in, unless it's a given constant, then it becomes too sloppy and haphazard.

Question: Somebody here has made the statement that too many school boards are overly concerned with the reaction of the white community, and not enough concerned with getting the schools and the curriculum ready. Have you found this to be generally true, in your experience?

Answer: Yes, and one of the important things I think you should do early in the process of desegregation is to sort out your priorities and figure out what importance public relations has in your program.

As I told you, tomorrow we will hear from Bill Self, who, I think, is one of our great superintendents. Bill Self used what I thought was a very good method of handling his potential public relations problems. About two or three weeks before schools were to open under the new desegregation plan, Bill got together with the director of human relations in the city and they held a luncheon to which they invited the mayor, the sheriff, the chief of police, the local FBI agent, the president of the bankers' association, and the president of the Better Business Bureau, among others -- all people with the ability and the power to exert some degree of influence on other people. And he told them this: "We have been ordered to be on the frontiers of social change. We didn't especially ask to be there, but we are there now. We are talking about your community, we are talking about your children, we are talking about the people who voted you into office, we are talking about all of us -- and we cannot stand alone; we must do things as a community. Therefore, Mr. Mayor, I know you're going to support us, aren't you?"

Now, what else is the mayor to say, in front of 50 or 75 people, including a few reporters? "Well, yes, uh, sure, I'll be glad to." So Bill comes back with, "Now, you will hold a press conference before the day is over and announce this, won't you?" "Uh-huh...Gulp." Bill went around to those people one by one, and for the next month you couldn't pick up a newspaper in that city without finding two or three press releases on organizations, groups or influential individuals giving their support -- not necessarily to the school superintendent, or to the board -- but to the concept of quality integrated education. There are ways of getting that kind of support.

One thing, though, that we have found a problem is that the people that you ordinarily think of as being the influential people aren't necessarily so. I think this is especially important for whites to remember as they try to pick out the leaders in the black community.

I had a team that made an assessment -- really an investigation -- of a school district which had gained a reputation nationally as one of the success stories in school desegregation. The people got kind of big-headed about it, I guess, and they must have let up on their efforts. When the local country grand jury went to the high school to see how beautiful everything was, 200 kids went rushing down the hall breaking everything in sight just as they came in the door. The whole thing blew up right in their faces. They spent three weeks in that school, and they found out, among other things, that the day that we had been supposed to go into the high school to begin interviewing, some dynamite had been planted in the building; some of the students had planned to blow the school up that day.

Naturally, the superintendent was upset and he wanted to find out what had been going on that he was unaware of that would set off a chain of events like this. We tried to take the pulse of the black community -- to find out, in effect, what the blacks were thinking -- without having to interview everybody in town. It took us a while to figure out who was a person we could go to in order to get some pretty accurate information, but we found out something that was quite a surprise to the superintendent and the members of the board. The person we were looking for wasn't the minister, he wasn't the mayor of the town, but he was a janitor. He was the man to talk to. Now, wasn't that an interesting way of finding out some things?

By the way, here's something else you might want to pick up on. Eight different groups studied that school system. The superintendent had eight different reports on his desk when I called him one day about something else, and he said, "Charlie, I want to ask you something. I have eight reports -- eight studies on the school system -- on my desk, and yours is the only one that tells us anything we didn't know already. How did you find it out?" I said, "The only two things I know of that we might have done differently from the others are that, first, we read your high school newspapers as far back as the last couple of years, and the youngsters have been screaming the answers out to you in their school newspaper, which you apparently didn't read; and, second, we hired an undercover policeman and had him out walking the streets with the kids, shooting pool, going to church -- I don't know exactly where he went or exactly what he did, but he got the leads for us. He found out what people we needed to talk to, and he got some of the answers we needed." So one of my main points, again, is that you must be able to recognize who and what is important and who and what is not.

Getting back to my topic: this whole business of getting the community ready is very important. Let me point out that one of your best moves is to establish good, positive rapport with the television, radio and newspaper people. The actual stories in newspapers don't bother me so much, because I'm convinced most people don't read the stories. What is important, however, and what you must look out for, is that people read the headlines. Two summers ago, when schools opened in the Charlotte-Mecklenburg system, I was there. The Charlotte Observer, which I guess is the most widely read paper in the Carolinas, had a headline that read: "Schools Open Peacefully Throughout Southland." I also, however, bought a copy of the Winston-Salem Journal that day. The story was the same word for word, but this time the headline read: "Incidents Mar Openings of Schools Throughout Southland."

Now, I don't think anybody read the story, because they figure they can get the scoop by just reading the headlines. So get to those headline writers! If your news people can't find anything good to say about the desegregation of schools, tell them they may keep their opinions to themselves.

Well, folks, I didn't get in till 1:30 this morning, and we did a workshop in Cleveland last night. I'm tired, and I'm about ready to sit down. So I'm going to say that my part of the program is ended at this point. Thank you very much, ladies and gentlemen.

BUSING AND METROPOLITAN DESEGREGATION

J. Harold Flannery *

Busing As A Non Issue And The Neighborhood School As An Instant Tradition

As you see from the program, we are scheduled to talk together today about busing and inter-district desegregation, which I take it from my standpoint to be a mandate to us to consider metropolitan desegregation solutions.

I'd like to begin by noting that there is very little to be said from a lawyer's standpoint about busing, about pupil transportation. It's my impression, based on actual school suits, that most judges are, at the threshold, quite interested in the busing issue, but as the expert testimony in school desegregation trials unfolds, they become quite bored by the busing issue because it's a non-issue. There is no substance. It is figuratively milkweed that upon examination blows away. Let us consider briefly why that is, what factors, what criteria lead neutrally oriented judges to that conclusion very quickly.

Mr. Flannery, an attorney, is Deputy Director of the Harvard Center for Law and Education. Mr. Flannery served of counsel in Bradley v. Milliken, the Detroit desegregation case.

We're not all aware that approximately 42% of the kids in this country go to school on buses. 65% are transported to school if you include other forms of transportation and parochial schools. And by the way, an infinitesimal segment of all busing is for desegregation. The Pennsylvania Human Relations Commission has done a controlled study in Pennsylvania, and the National Traffic Safety Council for the NEA has done a rougher but also a controlled study with regard to pupil transportation, and the conclusions are that from every standpoint being bused to school is safer than walking. The Pennsylvania figure is 3 1/2 times safer; the National Traffic Safety Council figure is 7 times safer. From the standpoint of weather hazards, going to school on a bus is preferable to walking to school. Most professional educators that I have heard testify in school desegregation cases will testify to the effect that, with respect to tardiness and absenteeism, pupil transportation from their standpoint is preferable to walking to school. And lastly the data indicate conclusively that the younger the kids the easier it is to bus; so that the myth to the effect that little kids shouldn't be transported but it's all right with bigger kids, seems to turn the facts on their heads. Indeed, it's the junior high kids who tear up the bus. And that is consistent with the general experience that junior high schoolers are hardest of all on all school equipment. As to elementary kids, lets stop and ask ourselves how preschoolers get to school in this country, those who go to either publicly funded or privately funded nursery schools. They go in station wagons, they go in everything but wheelbarrows. But elementary school kids seem to thrive on a bus ride. They sit and look out the window which they find fun. So, consequently, an expert witness will say, more succinctly perhaps than I have, and the judge or judges tend to say, after the expert witness finishes, gee, what's all the shouting about? There's no basis for concluding that busing, forced or otherwise, is educationally, psychologically, or physically harmful.

The other side of the pupil transportation coin is the neighborhood school. The neighborhood school, in my judgment, is an example of instant tradition. There is not in fact a long tradition of neighborhood schools in American public education. It is of quite recent vintage, and the longer trend has been otherwise. The tradition has been toward larger and larger schools covering larger and larger geographic areas, for reasons of economy and indeed to promote heterogeneity, until race entered the equation. To any who may wish to investigate the dubious history of the neighborhood school, I commend a publication of Meyer Weinberg's group in Chicago (Integrated Education Associates), called Race and Place: A Legal History of the Neighborhood School , which dispels the notion that we have long cherished that institution. Moreover, I would suggest to you that in racially heterogeneous districts the behavior of white families, who often choose to attend further still-segregated schools, belies the neighborhood school concept.

We discussed yesterday two factors that constitute or contribute to illegal or de jure segregation. We mentioned unqualified open enrollment, a system which permits kid to opt out of their neighborhood school, or optional zoning, which has the same effect. It's remarkable in many Northern cities the extent to which avoidance of a neighborhood school and preference for a bus ride is observed if attendance at the neighborhood school means going to a racially desegregated school, whereas the bus ride from the optional zone would permit attendance at a whiter school. So I think not only in our tradition, but in our behavior in public school systems, the neighborhood school factor has been belied.

There are two aspects of the neighborhood school philosophy that are legitimate, at least in the psychological sense, and the first is the security factor. I am not enough of a psychologist to know what if anything, it manifests in a deeper sense, but many white people in this country are quite concerned (and the converse may be true although I'm just not familiar with that pheneomenon) about security factors involved in their kids going to schools in Black neighborhoods. It may manifest a psychological burden of guilt about the deterioration the dominant community suspects it has permitted to occur in poor neighborhoods, since it has control of community and law enforcement resources. In any event, to the extent that the security issue is a real one, a school that is insecure for white parents' kids is insecure for anybody's kids, and the law enforcement or security issues ought to be dealt with as security issues and not circumvented as desegregation issues. A second aspect commonly associated with neighborhood schools, and one that I think has an aura of legitimacy, is the notion that the neighborhood school, more than the non-neighborhood school, will tend to preserve the cultural heritage of the neighborhood that it serves, and will reflect the ethnic homogeneity that neighborhoods in this country sometimes reflect. Also,that the neighborhood school is more likely to reflect local control of power, or at least a sense of identification, that the non-neighborhood school will not have. I don't think that those of us who support desegregation ought to dismiss these arguments in favor of the neighborhood school without fair consideration.

There are several answers to those points. First, the homogenization role, or the homogenization factor in American public schools has been vastly overstated. It's part of conventional wisdom that the school is the melting pot, is the public institutional melting pot. In fact, it has not been a melting pot, and factors totally unrelated to the schools, churches, family and community, have had more effect on kids' attitudes and behaviors than schools have had. But secondly, it seems to me that non-neighborhood schools can and ought to be organized in ways that preserve, protect and promote cultural homogeneity, culutral pluralism, cultural diversity, no less than the neighborhood school. In fact, it seems to me that just as there can be desegregation without integration (although I cannot perceive an integration without desegregation), it is quite possible to foster pluralism, cultural respect and cultural diversity in a non-neighborhood desegregated setting, and there must be ways to insure an equitable power distribution as well. On the other hand, it seems to me quite difficult in schools, neighborhood or otherwise, to foster cultural homogeneity or cultural pluralism or cultural diversity without slipping over into cultural divisiveness, if you're operating in a segregated setting, be it neighborhood or otherwise. But I would suggest that the cultural values, heritage values that are often associated with neighborhood schools (sometimes in good faith, and that's what I mean by the legitimacy factor) can be preserved in a non-neighborhood context. That is I would hope that the school on "neutral turf" would respect Chicano values, would respect Anglo values, would respect Black values, irrespective of where the school is located. And that's the way the school ought to be organized anywhere, that's the way it ought to be run anywhere; and I'm not optimistic that schools that are organized in a physical sense on a strictly neighborhood basis can foster such values and foster respect for cultural pluralism and cultural diversity.

Lastly, it's appropriate to recall briefly what the courts have said about busing and neighborhood schools. The United States Supreme Court in the Charlotte-Mecklenburg case and the Mobile, Alabama cases addressed the questions of pupil transportation and neighborhood schools. Chief Justice Burger said, in effect, that if this were a perfect world, if we were writing on a clean slate and there were not racism manifest in our society, it might be appropriate to assign kids to schools nearest their homes. But it's not a perfect world. As we discussed yesterday, schools are often located on the basis of the ethnic composition of the community, or segments of the larger community, so that if you make an assignment to schools nearest home it would simply be building into the school system other racism and discrimination and the effects of prior racial discrimination. So, he said and he summed it up very tersely, I had not heard the phrase before "the walk-in school;" he said in the Charlotte case that desegregation plans cannot be limited to the walk-in school.

There are a number of lower federal and state cases which are interesting. We mentioned yesterday that a 3-judge federal district court in a case affirmed by the U.S. Supreme Court struck down a New York anti-busing statute. And finally there is a California case which strikes me as an example, if the rest of you will permit, of a sort of lawyer's joke. The California legislature passed a statute which said kids may not be transported if their parents object in writing. And a school system immediately brought that case to court in an almost collusive way, if you will, seeking practically an advisory opinion, and the California Supreme Court in a stroke of master craftsmanship said, well, of course, there's nothing wrong with this statute. And we as judges always seek an interpretation which would avoid the constitutional issues, and therefore we hold that the statute means as follows: parents a and b object in writing and the objection is upheld as to pupil transportation. They may not, however, object to the reassignment to a different school that has been made. They have only the right to get there as they prefer. Perhaps the objecting families said to themselves: "We won, or did we?" But the gist of it is that families do not have a protected right to attend segregated schools or to defeat desegregation plans. The busing issue, with the exception of the control and security factors which may be largely psychological and should be dealt with as law enforcement problems, not school problems, and cultural heritage factors, is not legally or educationally genuine.

METROPOLITAN DESEGREGATION

Now another part of my mission this morning is to discuss with you inter-district desegregation, which often means metropolitan desegregation; the Detroit case for example, and I would like with your indulgence to approach it from 3 standpoints. First of all, why metropolitanize the school district? Second, what are the legal analytical routes? Why are judges, how are judges and lawyers getting to the notion that metropolitanism is appropriate on the facts? Third, who must bring it about and how is that determined, how is that decided?

Why Metropolitan Desegregation?

It seems to me that one of the arguments that can be made on behalf of metropolitanism is the financial argument. The big city school districts vis 'a vis their neighbors, Detroit vis 'a vis Grosse Pointe, perhaps Chicago vis 'a vis some of its substantially more affluent neighbors - there ought to be a sharing of monies, financial reasons to metropolitanize are uppermost in some minds. I don't find that position persuasive because the implication of that position is that metropolitanization is not necessary, perhaps not even appropriate, if only the monies are readjusted. And I think that the proponents of metropolitanism who rely on the financial argument run the risk of depriving themselves of a basis for metropolitanism if the state legislature has the wit, and some state legislatures will, has the wit to say: "all right, instead of metropolitanizing, which would entail desegregation, we'll redistribute the money."

In my judgment, we ought to say to ourselves that the reason for metropolitanism is that, since World War II in this country, we've had an increasing phenomenon of ethnic and racial isolation between our suburbs and our cities. It is educationally, probably in the cognitive sense, but surely in affective or associational sense, undesirable and unrealistic. Minority families and poor white families are increasingly confined in cities and non-poor white familes (and non-poor minority families but to a lesser extent because they are the victims of housing discrimination) are in our suburbs. The result of that is I think harmful, if only in the sense of being totally unrealistic; it is not going to be a reflection of what the industrial world, the labor world, the professional world, will look like when the kids grow up. I want to suggest to you that the losers are not only the kids located in the cities, the losers are also the kids located in the suburbs. In this country school consolidation proceeded in the late 19th and early 20th century because there was a perception that rural American kids were getting increasingly alienated, or at least isolated, from the main stream of an urbanizing society. And that is part of the thrust for school consolidation as well as the economies of scale and all of the reasons known to educational economists. It seems to me that there is a risk of suburban neo-isolation in this country which, whether the suburban parents are willing to acknowledge it or not, is quite as harmful to their kids as the isolation of rural kids was 20 or 40 or 50 years ago. So that when I talked about metropolitan desegregation, for the benefit of bringing kids together, I do earnestly suggest that to say that suburban kids are losing now is more than rhetoric; and I think that inner city kids are losing as well. And that, it seems to me is the why, the educational and sociological why, of metropolitan school desegregation.

Legal Foundation for Metro Desegregation

But that's not an easy proposition legally. Courts are inclined to take school districts as they find them. Plaintiffs bring a suit against the school district in which they live, so how does a court get, as a matter of analytical and legal good sense, how does a court get to thinking metropolitanism Let me back up a second, and suggest that the principles are not brand new, although most school desegregation lawyers have not, until recently, done much with them. The second Brown case in 1955 contained language that is in retrospect fascinating on this issue. The court spoke of giving time for remedies to be developed and implemented, and the court spoke of redrawing attendance lines for schools. But the court also spoke of revising school district lines. Now, I've never had an opportunity to ask Earl Warren how shrewdly that was written. But it's an enormously pregnant clause in the case that has not until very recent years been genuinely exploited and I'm certain that it meant more than simply redrawing lines around the school building because that was spoken of separately. The language that I refer to was actually revising and redrawing school district lines, so that the mention of redistricting or metropolitanism is not yesterday's legal heresay; it has a tradition of at least 17 years.

The second starting point for a lawyer is an Arkansas case called Haney against the Sevier County school district. Briefly, this was a school district in Arkansas, which said, "by all means, we ought to consolidate our schools." It was a largely rural county and therefore residentially somewhat desegregated. They took pockets of the county and formed a Black school district, and noncontiguous pockets of the county and formed a white school district, and said now we have consolidated. That case got to the 8th Circuit Court of Appeals in 1968, and the school systems had desegregated within the existing districts, and the Court of Appeals for the 8th Circuit said, "oh, come on fellows, after all you've created the districts for segregationist purposes just as one might identify and gerrymander school attendance zone lines within districts for segregationist purposes, and we can see no rational reason for not making one big new district in which schools are paired and grouped and attendance zone lines are redrawn and kids end up in statistically desegregated situations." The court mandated that relief, and it seemed self-evident, if you look at the facts of that case that the districts were drawn for segregation purposes and were undrawn for desegregation purposes.

More recently, it seems to me, the next link in the chain, from a lawyer's standpoint, is the Indianapolis case. Indianapolis, to sum it up, perhaps too briefly, adopted a consolidated government system in the 1960's, which provided that, for a variety of purposes, there would be a larger entity than simply Indianapolis, there would be a reaching out into other communities, for a variety of governmental purposes, such as police, fire, sewage and so on; but they omitted schools! Judge Dillin, in his opinion finding that the city district of Indianapolis itself was intra-district illegally segregated, said in his opinion, in effect, "Oh, by the way, let's pursue the question of why when they went to a metropolitan system for a variety of governmental purposes, did they leave out schools?" In my view, the answer to the question will be that schools were left out to preserve suburban segregation. But only the trial will tell. As you can see, doctrinally, it's a slight advancement on that Arkansas case, but it does follow in a logical progression in my view.

Other recent cases include Richmond, Virginia, in which the plaintiffs were able to prove that the state of Virginia had contributed in a variety of ways to segregation in Richmond and segregation of Richmond. There are two other examples, first the Lincoln Heights district in Ohio. The state superintendent in Ohio has a mandate to compel school districts to consolidate when certain demographic, economic, and population factors are met. In 1968, if I recall correctly, the United States Department of Justice wrote to the Superintendent of Education in Ohio noting the existence of all statutory requisites with respect to mandating consolidation of the Lincoln Heights district, an all black district with its largely white or all-white neighbors. "All the statutory demographic, economic, population factors are met, so why haven't you exercised the authority given you in the statute, the mandate given you in the statute, as you might have in another situation?" As you might expect, there was an awkward pause, and Lincoln Heights has since been consolidated with its neighbors. Again, it seems to me perfectly logical but it was a slight advancement on the doctrine. The state was omitting to act for racial reasons, when all of the statutory factors would probably have led it to act in a racially homogeneous situation. Their failure to act in a given situation because of race was viewed by the government, and by the Ohio legal authorities and educational authorities, as a potential violation of the Fourteenth Amendment.

One of the recent cases, and in some respects the hardest proposition, is in Hartford, Connecticut. There, of course, the municipal lines were probably drawn in the late 1600's, and school desegregation was really not in anybody's mind. But Hartford, like a number of our other Northern and Northeastern cities is becoming heavily minority. The minority - white and black populations together now exceed 60%. And the plaintiffs in the Hartford case have sued to invalidate a state law that made school district boundaries co-terminous with other municipal, political boundaries. The plaintiff's argue it is irrational. School district lines do not originate in heaven. Whether or not they were originally designed for segregation, or other illegal purposes, the facts of the matter are that if this were a racially homogeneous situation, the state or the responsible authorities would have changed this school district line, because they're leading to educationally inadvisable results. These may be a violation of the Constitution if the failure to change this line is, in effect, discrimination by omission on the part of the state.

Who Has Responsibility for Desegregation?

Our third question is, whose job is it in these matters? And the courts are increasingly concluding that it's the state's job. That may be an unexpected conclusion because we think of school cases as the plaintiff versus the board of education of the school district, not the state. Well, it seems to me, and this arises in other contexts as well in the metropolitanism context, that the courts are rediscovering that education, as a constitutional matter, is first and last the responsibility of the states. As we said yesterday, the United States Constitution doesn't speak of the Phoenix school district or other local political subdivisions. The United States Constitution contemplates the central government and contemplates state governments, and it contemplates citizens, but the governmental entities are the states and the central government. And state departments of education, offices of superintendents and other state educational authorities, have somewhat atrophied in this century, which is not news to educators here, or to lawyers, I'm sure. But the courts object. It appears to me that the courts are saying, "Well the recent paralysis is your problem, and we're going to breathe new life into you. The Constitution says it's the states which must provide equality of educational opportunity, without regard to race, and the Constitution makes that a non-delegable responsibility. You may do it through your agents, you may do it in various ways for reasons of convenience, through your school districts, but you must do it and be responsible for seeing that it gets done. If the local agent, the local district, won't do it or can't do it, you, Mr. State, are going to be responsible for doing the job or seeing that it gets done."

As we said yesterday, in the context of requiring states to make sure that their districts desegregate, once you perceive that it is a state responsibility, in practical approach and in the technical and legal sense, it's not very hard to take the next step and say, "by the way, why do you draw the district lines this way, Mr. State Department of Education," just as you say to the school board, "why did you draw the intra-district lines this way?" And of course I think educators can claim, more compellingly and persuasively than I can, that school district boundaries have nothing sacrosanct about them. As a matter of fact, they are artifacts of convenience. They are simply drawn for delivery-of-service purposes, if you will. Some state superintendents of education and state boards of education tend to regard local superintendents and school boards as sacred and omnipotent. But that's their misperception. It's not an omnipotence of an autonomy of constitutional dimensions.

Now, once it is seen that local districts are constitutionally, not more than vehicles for the discharge of state constitutional responsibilities, then it's not difficult to say to the state, "whatever your constitution and laws tell you that you may do with the local school districts, whatever your legislature says you may do vis à vis local school districts, you've got higher obligations and responsibilities and powers that state constitutions know not of. You are ultimately answerable to the Constitution of the United States of America -- whether or not your state legislature has given you the authority to do what has to be done in fulfillment of constitutional rights." If one looks at school district lines, if one finds them educationally irrational, if one finds them to be supported by no more than a coincidence with residential segregation, then the school district lines themselves may be changed. Where the state has contributed to intra-district segregation, which Judge Roth found in Detroit, Michigan, in public education, then the state's remedial responsibility is even greater and more direct.

A Lingering Question

The last question, it seems to me, that the lawyers are having problems with, and it arises in different ways but it's essentially I think the same question, is that when a judge says that he wants to consider metropolitanizing because Detroit or Hartford is a 65% minority school district, and he doesn't like the desegregation plan limited to a 65% minority school district, two questions arise. Is that racism itself? Is that a disguised way of saying that there is something wrong educationally or sociologically with majority black schools? And the second question is political, namely, some minority communities are saying, "Just as we're on the threshold of controlling a major school district, we are faced with another dilution, another dispersal. Whites oppose black folks controlling the school system. Whites want a dispersal. Whites want to go back to the metropolitan area where once again they will constitute 65% of the school population." Well, I don't have an easy answer to those points. It does seem to me that, if a judge or a lawyer thinks that there is something a priori educationally wrong with a majority black school, then it does appear to me to be disguised racism, and the judicial answer is contained in a concurring opinion in a case called Brunson in which the court said, "Don't tell me that there is something different about desegregation because the district is majority black than desegregation if the district is majority white." That's an impermissible consideration. It does seem to me, and I can't answer the political argument, except to suggest that the larger community, white and black, must be moving and operating in good faith, that the educational answers do seem reasonable to me. The answers are basically two. Because of power discrimination, there is a high correlation between minorities and low socio-economic status. It is a result of limited educational and employment and hiring opportunity visited on minority parents and our grandparents. And therefore, for that reason, and for the further reasons that the SES composition of schools seems to be a very significant factor in the educational quality of schools, it seems reasonable to argue that one ought to support a socio-economic status mix. I think there is a high correlation between race and socio-economic status. So that if you're talking about a 65% black school district you're talking about a 65% or more poor school district. So it seems to me educationally reasonable and non-racist to say that there seem to be no educational benefits from desegregation of poor kids with poor kids. And for that reason it's inadvisable to limit, unless you have some other legitimate reason, the plan to a majority poor school district, which, for statistical reasons, in this country means a majority black school district, would desegregating within itself, which would not be educationally viable.

But even with a further study of the data, even if further analysis should disclose that there's something the matter with that analysis, it seems to me reasonable to say, speaking from the white-legal community, which I presume to represent, that however you slice it, this country is not 65% minority, it's on the order of 20% minority. We don't have a black General Motors, we don't have a Chicano Xerox, and, at least on paper, we don't have a Black Army. What I'm suggesting is that we don't live in a 65% black society. And schools ought to be the microcosm and the precursor of the larger adult society in which children are going to live and function. A 65% minority school is not representative of that society, any more than a 100% white school is representative of that society. So that even if the educational factors that I talk about in a non-racist sense should turn out to be methodologically unverifiable, it just seems to me to make no sense to run schools in a neo-isolated suburb and in the racially isolated city as if the rest of American society were 65% minority. It strikes me as unhealthy to pretend that you've got a desegregation plan when you limit it to an unrepresentative area. The political question that I raised I'm not able to answer. I'm not able to answer it. But it doesn't seem to me a persuasive enough reason to avoid metropolitan desegregation.

CONCLUSION

Those are the legal routes. Those are the practical whys of metropolitan school desegregation, and I suggest to you that the states are going to be responsible for bringing it about, because states do have, in the federal constitutional sense an obligation in my judgment to provide equality of educational opportunity. And unless courts are persuaded that district boundaries are in some way educationally compelled or magical, the courts are going increasingly to require the metropolitan approach to school desegregation.

VOLUNTARY vs. INVOLUNTARY DESEGREGATION

John Cochran *

The choice you make depends on your purpose -- desegregation, or personal survival. If your answer is "survival", the answer to voluntary vs. forced desegregation is simple -- go for "voluntary" every time!

I am assuming the goal is desegregation or better yet, integration. If that is the goal then there is no question in my mind about the need for force.

I think it is necessary to look at the terms "voluntary" and "involuntary". If you will forgive the expression, they are not all black nor all white.

One question that needs to be examined is, "Who does the volunteering?" I am assuming that when we talk about "voluntary", we are talking about individuals

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Dr. Cochran was the Superintendent of Schools in Kalamazoo, Michigan, at the time a newly constituted Board majority rescinded a previously adopted voluntary desegregation plan. The system has since desegregated under court order. Dr. Cochran is currently Assistant Superintendent in Port Huron, Michigan. Dr. Cochran was joined by Drs. Dana Whitmer of Pontiac and Norman Scherman of Hempstead who considered the the voluntariness of desegregating from the perspective of the district.

making decisions, and when we talk about "involuntary", we are talking about some organization or agency making the decision for individuals, with sufficient "clout" to back up their decidion.

I would like to react briefly to some of the options. For purposes of clarification, I have categorized them.

VOLUNTARY

Open Housing

A handy panacea which lets people argue intelligently and with a clear conscience for desegregation on a level even broader than schools, and with the comfortable knowledge that it will not resolve the problem in their lifetime or that of their children.

Few question that this is the best answer. Honest people know that this approach has made few changes in the past and has little hope for the future. People in Kalamazoo had guts enough to use this argument, having defeated implementing ordinances at the polls either two or three times.

Open Enrollment (Either wide open or limited and controlled)

If wide open, the chances are it will increase segregation. If limited and controlled, a very few liberal families who need it the least and who will benefit from it the least, will take advantage of the opportunity.

Open Enrollment with Enticements (Magnet schools)

Except in unique communities, this approach still does not really get at large numbers of people.

INVOLUNTARY

Board of Education Decision

Gets the job done while permitting administrative lead time for planning and for preparation. The real strength of this approach is the opportunity for a series of planned preliminary decisions prior to the ultimate one. These types of steps can increase the chances for real integration rather than simply desegregation. Further, a Board decision gives the court a different and perhaps easier question with which to deal.

However, there are some problems. First, many people, including staff at all levels, won't believe that the Board will make the ultimate decision and hence won't really see the need for preparatory activities. The bigger problem is that the Board of Education won't be able to make its decision stick. The chances are great that a Board which makes a decision to integrate the schools will be replaced, either by recall or by regular attrition as terms expire.

Court Decision

This is the only decision which still has enough strength to get the task accomplished with some degree of permanency. The major problem with this approach is that it leaves school personnel in an untenable position. If they fight the decision all the way, when it comes, they are faced with implementing it with few plans and no preparation. If they assume that a court decision is going to come and prepare for it, they are accused of aiding and abetting the enemy, with potential personal consequences.

As I think back, I believe the pattern followed in Kalamazoo is a realistic and desirable pattern for integration. To summarize it very briefly, the following major steps were taken:

1. Study by a Citizens' Committee for two years with a unanimous recommendation to integrate, along with general guidelines and proposals for preparatory steps. This gave direction to administration and some basis for beginning to plan. During the Committee's study, much data was collected which was useful later.
2. Board of Education adoption of the recommendation. This put the Board on record as being committed to integration and gave the administration more specific direction.
3. A year of limited and controlled voluntary integration. This showed clearly the limitations of a voluntary program. It also gave some valuable experience, but most important, it

identified a group of parents and teachers who were willing to state loudly and clearly that they had experienced integration and it worked.

4. A Board decision to adopt a specific integration plan to be implemented at a specific time. This provided the administration with time to develop specific plans for the millions of things that have to be done to implement a program.
5. Court decision to support Board plan. Without the Court decision, the new majority on the Board would have ruled out integration of the Kalamazoo schools. A court decision gives time for things to jell. On the basis of experience in other districts, time is a great healer. If the local, state, and national politicians can be kept out of the situation, I would guess that changing back to segregation would be difficult five years from now.

In my judgment, involuntary desegregation is the only way to reach desegregation. If the desegregation is to become integration, the decision must be accompanied by a great deal of preparation.

One of the arguments used by those who oppose involuntary desegregation is -- "You can lead a horse to water, but you can't make him drink!" As a "little old country boy" who has led horses to water, let me assure you of a couple of facts:

1. If you leave a horse in the vicinity of a water trough long enough he will drink, especially when he considers the other alternatives.
2. He probably will even learn to love to drink.

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PLOYMENT

Photographs by Christella Moody

Top: Jean Leonard (second from left), a Conference Coordinator, makes last minute check with consultant Jerry Bellon.
Left: Joe Hill and Prof. Dan Cooper discuss the recruitment and evaluation of minority personnel.
Below: Participants listen to speeches during the conference on The Personnel Director in the Desegregation Process.

THE NEED FOR POLICIES COMPLEMENTARY TO DESEGREGATION

ASSESSING EQUAL EDUCATIONAL OPPORTUNITY

Charles B. Vergon*

WHY ASSESS EEO?

In the eighteen intervening years since Brown v. Board of Education, relatively few school districts have regularly stopped to systematically assess the degree to which they satisfy their constitutional obligation of providing each child an equal educational opportunity. The advantages of such an assessment are fourfold: (1) to insure that the district is meeting its constitutional obligation; (2) to identify the nature and extent of its successes in providing EEO and allow these successes to be built upon; (3) to detect shortcomings and develop specific remedies; and (4) to establish an objective benchmark against which to judge subsequent progress in providing a higher degree of EEO.

HOW?

One component of any such analysis must be a thorough

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analysis of district policies and practices. This is because if racially identifiable schools exist or some schools are deemed of inferior quality physically and/or educationally, it is largely a result of past and present board policies and their implementation. Conversely, if desegregation and EEO are goals toward which a district desires to move, policies must be modified and made supportive of desegregation rather than the perpetuation of pupil isolation and unequal educational opportunities.

Examining policy is also important for another reason, and even to those districts with a lesser priority on EEO. It is significant since courts have long recognized that policies and local practices which deny EEO in Northern districts constitute "state action" for purposes of the 14th Amendment and thus, under certain circumstances, are as legally reprehensible as the state segregation statutes that existed in the South at the time of Brown.

To facilitate such district assessments, the Program for Educational Opportunity has identified some of the policies which most frequently impact on EEO and devised a procedure for examining these policies and their consequences. While the details and quantitative aspects of the Program's EEO Profile will not be discussed, the general conceptual framework will be explained:

A. Pertinent Policies

There are two general types of policies which affect the provision of EEO; (1) those determining the racial composition of the student body and faculty at a school and (2) those governing the quality of education and allocation of resources within the district. A nonexhaustive listing of these policies include:

Segregatory Index

1. Racial composition of schools with analysis of contributing policies and practices including:
    - a. student assignment policy
        - (i) geographical attendance areas
        - (ii) optional/transfer zones
    - b. building capacity and utilization levels
    - c. grade organization
    - d. location of additions, portables, and new buildings
    - e. transportation practices
    - f. student classification within schools
2. Faculty racial composition and contributing policies and practices including:
    - a. recruitment and hiring
    - b. assignment and transfer
    - c. promotion
    - d. retention and dismissal

Quality Education Index

1. Student and faculty racial composition
2. Faculty qualifications
    - a. education
    - b. experience
3. Services and programs
    - a. curricula
    - b. special programs
    - c. extra-curricular activities
    - d. expenditures per pupil
    - e. class size or pupil-teacher ratio
4. Facilities
    - a. age
    - b. acreage
    - c. special facilities
    - d. utilization level

B. Types of Analysis

After culling from the local manual all policies and regulations which potentially affect the degree of EEO in the district, three types of analysis must be applied to each policy. The types of analysis are typified by the following questions:

1. Is the policy segregatory or discriminatory on its face?

   Put more simply, does it contain a racial (or socio-economic or sexual) classification? The archtypical example of such a policy would be one prohibiting children of different races from attending the same school. Of course no such policy will be encountered in 1972. However, that is not to say that the same goal is not being pursued through disingenuous though ingenious policies. Thus, a second type of analysis is necessary.

2. Is the policy discriminatory or segregatory in effect?

   Even though neutral on its face, a policy may be discriminatory in effect. However, it is a long standing legal principle that one cannot accomplish by indirect means that which cannot be done directly, since the Constitution "...nullifies sophisticated as well as simple-minded modes of discrimination."

   An example of a policy (written or unwritten) which may be discriminatory in effect is one providing for the construction of new schools at the center of population growth. This is almost assuredly the case where coupled with a neighborhood attendance policy, because as demographers tell us, the pattern of growth is most northern communities is away from the central portion of the city and minorities, enjoying less motility, are not proportionately represented in the outlying areas.

Not only does such a construction policy further segregate the student population, but it also has a discriminatory effect on the allocation of resources, since at all times the mobile, middle-class white students will have the most modern permanent facilities. This inequality -- measurable in terms of comparability of building age, special equipment, square area of building and/or site per pupil, between racially identifiable majority and minority buildings -- is a natural and foreseeable consequence of such a construction policy.

Of course, similar effect-analysis must be applied to each policy enumerated earlier as impacting on EEO. At least where segregatory and discriminatory effects are natural, foreseeable, and probable consequences, the adoption or continuation of a policy or practice may serve as indicia of unconstitutional segregation.

In many instances the effects of particular policies, unlike the construction example, are unpredictable. These less predictable effects often afford special insight into the nature and dynamics of a district, and point to the causes and suggest solutions to various district problems.

The third type of analysis differs from the others by focusing not on a policy per se or its effects, but on the way it is administered.

3. Is the policy administered in a nondiscriminatory manner?

Even a policy which contains no racial classification and is not discriminatory in effect, may be administered with an uneven hand.

While virtually any policy may be discriminatorily applied, objections commonly are focused on those policies governing pupil assignment and transfer, student classification (ability grouping), and discipline.

More specifically, for instance, many districts operating on a neighborhood school concept draw attendance boundaries on the basis of criteria including nearness, access routes, and man-made and natural barriers. It is not uncommon, however, to find in two circumstances in all other respects similar, that whereas a railroad or major thoroughfare separating two racially different neighborhoods precludes those students from attending the same school, students from two racially homogeneous neighborhoods separated by a railroad track or thoroughfare attend a single school.

Uneven administration of policies along racial, socio-economic, sexual, or generational lines invariably leads to animosity, both between the differentiated groups and toward the schools. This animosity is besides the legal implications of ignoring one's own written policy and thus denying equal treatment.

C. Inventory of District Policies and Practices

Relying on the types of analysis described earlier, and in order to facilitate the examination by districts of their policies and practices which may affect EEO, the following questions have been devised.

THE UNIVERSITY OF MICHIGAN
Program for Educational Opportunity
School of Education
Ann Arbor, Michigan 48104

INVENTORY OF DISTRICT POLICIES AND PRACTICES

I. STUDENT ASSIGNMENT POLICIES

A. Non-geographical assignment/optional zones.

1. On what basis is the option exercisable and subject to what conditions?
2. What is the practical effect on the racial composition of the schools?
3. Is the option administered consistently?

B. Geographical assignment.

1. Are attendance boundaries drawn as to have a segregatory effect?
2. Is the geographical attendance policy and its constitutent criteria applied consistently?
3. Have the attendance boundaries or any adjustments been knowingly built upon private residential segregation?
4. Have new buildings or portables been located so as to increase or perpetuate segregation?
5. Does the grade organization in any school vary from that prevailing in the district generally?
6. Is there a pattern of over or under utilization of certain facilities that is inconsistent with the general utilization level for the district?
7. Has the construction pattern, grade organization or utilization levels resulted in the unequal allocation of resources?
8. Do the transportation practices reflect or contribute to segregation?

II. STUDENT CLASSIFICATION POLICIES

A. Tracking generally.

1. On what basis are students assigned to a particular class?
2. Are the criteria consistently applied?
3. To what extent does the criteria result in assignment on basis other than that on which assignment purports to be based? (intelligence, -)
4. Is there a disproportionate number of minority students assigned to the "lower classes?"
5. For what percentage of students is the initial assignment a permanent one?
6. What percentage of students take courses outside their track?

III. PERSONNEL POLICIES

A. Recruitment

1. Does the district recruit at predominately minority as well as predominately majority colleges?
2. Are there minority people employed in the personnel office, at both clerical and professional jobs?
3. Is minority staff utilized in recruitment trips?

B. Hiring

1. Are similar qualifications required of potential employees of different races?
2. Who has the final say in hiring and who has veto powers and how is it exercised?
3. What is the school system's reputation among minority persons for fair hiring practices?
4. What has caused such a reputation and how might it be improved?

C. Assignment and Transfer

1. Are the minority teachers distributed nearly equally throughout the system or does the faculty racial composition mirror the race of the pupils attending the school?
2. If there is a disproportionate distribution of minority teachers, is it a result of the assignment procedure, such as absolute authority in central personnel office, building principal veto powers, or some other factor built in the system?
3. Are the qualifications of the teachers assigned to each school representative of the education and experience levels of all teachers employed in the system?
4. Does the intra-district transfer procedure and priorities contribute to segregation along lines of race, age, sex, experience, or qualifications?

D. Promotion

1. What qualifications and characteristics are used in evaluating applicants for promotion?
2. Are the criteria applied consistently to applicants of different races and sexes?

3. Are the criteria discriminatory in effect? (requiring prior administrative experience in the system when no minorities or women have held administrative positions in the past)
4. If the criteria are discriminatory in effect, can the system prove the business necessity of possessing such a prerequisite?
5. Does the location of minorities in the school hierarchy suggest a discriminatory pattern?
6. What positions have minority members who have left the district assumed in their new location?

E. Reduction in Staff

*1. Are there objective and reasonable, non-discriminatory standards governing the reduction and demotion of professional staff available for public inspection?
*2. Are the standards applied to all staff in the district or only those in particular schools when the staff is to be reduced?
*3. Are the evaluations under the criteria preserved and available to the dismissed or demoted personnel?
4. Are the standards discriminatory in effect?
5. If discriminatory in effect, are the criteria objectively measurable and accurate in assessing the ability of the people to whom applied? Are the criteria sufficiently job-related to justify the differential impact on minority personnel?
*6. In the event of reduction, are subsequent vacancies filled only through recruitment of persons of the same race until each displaced member who is qualified has had an opportunity to fill the vacancy and has failed to accept an offer to do so?

* Reduction standards developed to govern desegregating districts particularly, but of relevance to any district.

IV. ALLOCATION OF EDUCATIONAL RESOURCES

A. Facilities and Materials

1. Are the facilities substantially equal throughout the district?

    a. age of building & state of repair
    b. area per pupil
    c. special facility availability
        (i) library
        (ii) cafeteria
        (iii) science laboratories
        (iv) health clinic

2. Are educational materials distributed equally and equitably? (eg. library books).

B. Curriculum

1. Is the curriculum substantially equal throughout the district?
2. Are students given the opportunity to take courses not offered in their building but available elsewhere in the district?

C. Expenditures for Instructional Purposes

1. Of the local expenditures for instructional purposes, is each child receiving an equal share? An equitable share?

D. Eliminating Policies that Contribute to Unequal Educational Opportunities

If in answering some of the questions posed in the district inventory, certain segregatory or discriminatory policies or practices were brought to light, the policy or practice must be modified to foster equality of educational opportunity. There are a number of steps in this process.

First, review existing policies to determine whether they accurately state the district's objectives and operating principles, and that both are consonant with the law.

Second, collect the data necessary to analyze the suspect policies regarding their effect and consistency of administration.

Third, measure the disparity between what objectives the policy was intended to achieve and those which it is in fact achieving. Note particularly the segregatory or discriminatory consequences of the disparity.

Fourth, identify the cause of the disparity and possible alternatives to overcome the disparity.

Fifth, remedy the variance. If the cause can be traced to a racial classification on the face of a policy, delete the classification; if the policy has a discriminatory effect, adopt objective, non-racial standards which have a neutral effect; if the policy is being administered discriminatorily, incorporate procedural safeguards and periodic monitoring.

Other remedial techniques generally include: (1) clarification of the policy by introducing greater specificity, quantifiable objectives, time tables, and color consciousness; (2) notification of the existence of policies to school personnel and the community; (3) education of school and community as to the rationale for such a policy; and (4) establishment of a procedure by which policies and their application may be brought to the attention of the administration and school board by concerned individuals and groups.

Sixth, besides reviewing policies which impact on EEO, it may be advisable to embody the district's general commitment to EEO in a written policy.

CONCLUSION

The preceding has been devoted to the need for regularly assessing equality of educational opportunity, the significance of district policy and practice in insuring EEO, three types of analysis to employ when evaluating any policy, and some steps to follow in making the promise of EEO a practical reality for the children of your district.

A primary educational objective of your district should be the provision of EEO. Legally, the Constitution will accept no less. But does your district continue to adopt policy after policy without examining the efficacy of those policies or their impact on EEO? Let it not be said, as it has been by a U.S. judge and a senator, "With this act, the Board had one more statement of policy; and the Black community had one more written promise. Pronouncements of good intentions with nothing more amounts to monumental hypocrisy."

HIRING AND RETAINING MINORITY PERSONNEL:
Legal and Practical Analysis of Permissible Practices

A.J. Howell and Jerry Luck *

Part I -- Mr. Howell

I would like to start off by relating an incident that happened in a school district in the State of Virginia. This school had just gone through a reorganization because of desegregation and the former principal of the Black school had been promoted to the position of supervisor of books, desks, and chairs. This is the usual practice in the South, when the Black school are phased out. During the summer before the plan was implemented, he gave this problem a whole lot of thought and finally dealt with it in the most effective way that he knew how. He returned to his former Black school, prepared a noose, and hanged himself. Now, his death

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Mr. Luck is an attorney in the Office of General Counsel, Department of Health, Education and Welfare, Washington, D.C.

may be unique, but the carefully camouflaged means by which school systems have eliminated Black teachers and professionals is by no means unique. For example, in 1967 the Southern Education Reporting Service pointed out that in the City of New York, out of approximately 800 schools there were only seven Black principals. So we see that the problem of the displacement of Black teachers and principals is a factor to be considered in the North as well as the South.

For example, in a survey that was conducted by the Office for Civil Rights in 1971 dealing with full time teachers in approximately 1,563 districts, it was revealed that the total number of teachers (between the years of 1968 and 1970) during this period had increased by 100,000 in the continental United States, representing a 6.7% rate of increase. However, for non-minority teachers, the rate was 6.9%, while the rate for Black teachers was only 3.3%; less than half the non-minority rate. Now, this relative decline in the number of Black teachers was attributed to the 2.2% loss of Black teachers in the South, where most of the Black teachers still are. In the 32 northern and western states, Black teachers increased at a rate almost double the non-minority rate. Other minorities increased in all areas of the country, including the South. Now, in the 11 southern states, the same survey pointed out that the number of Negro teachers decreased by more than 2,000, and the number of non-minority teachers increased by about

20,000. So therefore, you have a 2.2% decrease and a 6.3% increase. In the fall of 1970, Black teachers were 22.2% of all teachers, but two years earlier they had been 23.7% of the total.

Another survey, which was conducted by the Virginia State Department of Education, pointed out that in 1964 there had been 32,232 white teachers and 9,248 Black teachers in the State of Virginia, but, however, six years later, the total number of Black teachers had dropped to 8,998, a decrease of 750, while at the same time the number of white teachers had increased to 36,859, an increase of 4,663. Then it's also interesting to note that the survey pointed out that during the same period of time, the total number of pupils both Black and white increased approximately 65,000. But at the same time you have a decrease in the number of Black teachers and principals.

The Office of Education has established training coordinators' centers in some of the southern states and these training coordinators' centers have documented that between the years of 1967 and 1970-71 approximately 6,000 Black educators were displaced. Information from these same centers further points out that an additional 4,207 have already been displaced during the 1971-72 school year, in North Carolina, South Carolina, Georgia, Alabama, Mississippi and Louisiana. Additionally, 1,193 were dismissed and the remaining were either demoted or assigned out of their field or unsatisfactorily placed. So, we point out these statistics to show you that the displacement of Black teachers and educators is very serious and that this problem exists regionally and nationally.

This brings us to our policies and requirements governing the assignment, hiring, promotion, demotion and treatment of faculty members. Now, on January 14, 1971, the Office of Civil Rights put out a teacher-firing memo. To back up a bit: under Title VI of the Civil Rights Act of 1964, school systems receiving Federal funds are required to operate services, programs, and activities in a nondiscriminatory manner. As such, they are required to hire, recruit, assign, promote, demote and treat staff in a nondiscriminatory manner. Now, the first two cases dealing with faculty desegregation came in about 1965, in the Bradley and Rogers cases, wherein the court stated that faculty desegregation is an essential element of any desegregation plan, and that you cannot have a unitary school system unless the faculty has been desegregated accordingly. Subsequently, there have been circuit court decisions which enunciate and require that faculty members be treated in a nondiscriminatory manner. It is our feeling in HEW that if you protect the rights of these Black teachers and administrators, that this not only provides for quality education but it goes hand in hand with providing equal educational opportunity.

As a means of monitoring these districts, each school district receiving Federal funds must submit an annual survey form. This survey form is due in October of each school year and requires information on the total number of Black and white teachers in the system, as well as the number of teachers newly hired, by race.

Now, you're probably wondering why, in the beginning, we talked about the patterns and the problems that have been faced by Black educators in the South. Well, I think you understand that as more and more school systems in the North are faced with desegregation problems, you're going to have the same kinds of problems coming up as you have had in the South with the displacement of Black teachers and administrators. In this regard, if we find out that a school system in the North is utilizing practices and procedures that are discriminatory -- for example, if you see that they are assigning most of their minority teachers to schools that are heavily majority-minority or if they are discriminating in promoting or assigning -- then this school system, even though it is located in the North, is subject to the same rules and requirements as districts in the South. This school system is also, therefore, subject to the requirements of the Singleton rule. This so-called Singleton rule came out of the 5th Circuit Court of Appeals in 1970. I am not going to go into too much detail on this rule because if I did I'd take away most of Mr. Luck's presentation.

Anyway, suffice it to say that the Singleton rule actually sets out the standards, safeguards and procedures that school districts are required to follow in assigning, promoting, recruiting and otherwise treating faculty members.

Now, getting back to those reports. Once a school district submits a report, we analyze the report to see whether Blacks are disproportionately assigned to certain schools and, at the same time, we look to see whether the newly employed staff members in a particular category differ significantly from the racial make-up of the system itself. We also look to see the number of Black principals, assistant principals, classroom teachers and other professional staff such as counselors, librarians, and special education teachers. And if we see that a particular pattern exists, then we require the particular school district to submit data relating how teachers are recruited, assigned, promoted, demoted and otherwise treated.

Now, I think at this particular point I will give the floor back to Mr. Luck, so that he can deal with the specific legal requirements that school systems are required to follow in the hiring, assigning, promoting, demoting, or dismissing of teachers, administrators and other professional staff members.

Part II -- Mr. Luck

Mr. Howell has demonstrated the importance of concern in the area of teacher discrimination.

Title VI and Administrative Enforcement

It may be a little repetitious, but in order to understand the difference between administrative enforcement and court enforcement, it is necessary to briefly review the requirements of Title VI of the Civil Rights Act of 1964.

As Mr. Howell has said, the Civil Rights Act requires programs and activities receiving Federal financial assistance to be administered in a non-discriminatory manner. HEW, because it probably is the largest granting governmental agency, has been delegated Title VI enforcement from various other granting agencies, for example, the National Science Foundation, the Agriculture Department, the Atomic Energy Commission, etc. HUD has recently established its own Title VI enforcement program.

The Attorney General has the coordinating function for the overall enforcement of Title VI.

When the Office of Civil Rights receives reporting forms from school districts from around the country, it may make a determination that a particular school district has to be investigated to determine whether certain things about the statistics are a result of discrimination. OCR may determine that an on-site visit to the school district is necessary to make sure that certain things shown by the statistics are explained.

Once all the pertinent data are compiled and OCR feels it has a case of discrimination against the school district, the data are sent to us in the Office of General Counsel HEW with a recommendation of enforcement. The Office of General Counsel then reviews the case and the attorney assigned to the case makes his recommendation. If he recommends enforcement and it is approved, the school district is brought into an administrative hearing.

You must also understand the limit of our jurisdiction. It is different from that of the court in that our only ultimate remedy is the cut-off of funds. We can't require affirmative action on this. Of course, we have an alternative in that once we have a case and we want to get affirmative relief, we have the authority to recommend the case to the Department of Justice and it will go to court as it sees fit and if not, of course, it also has the authority to intervene in a private suit. So in the teacher area up to Singleton v. Jackson Municipal Separate School District in Mississippi, they had no real teeth to enforce non-discriminatory policies against school systems that discriminated against staff. Of course it has to be one of the things that the Civil Rights Act provides for -- race, color or national origin. But in this Singleton case, when they went up to the Court of Appeals in the 5th Circuit, they remanded the case to the District Court in 1969 with directions to the lower court to accept a plan providing for these safeguards against discrimination for inservice teachers.

The Meaning of Singleton

This directive says that school districts should, among other things, direct members of the staff as a condition of continued employment to accept new assignments and it means that it is irrelevant where a teacher wants to teach. She has to take a mandatory assignment and in certain cases it is saying that distances that teachers have to travel to school are not relevant unless the distance involved is very unreasonable. We had a case involving teachers having to go from the mainland over to an island. But within reasonable bounds, teachers are to accept a mandatory assignment since in the Singleton case, assignments are mandatory irrespective of distance. Another directive was that staff members who work on the administrative level will be hired, assigned, promoted, paid, demoted and otherwise treated without regard to race, creed, color or national origin.

Another mandate was that when you have a reduction of staff, the teachers who are to be dismissed or demoted have to be first dismissed or demoted because of certain objective, reasonable, non-racial standards that have been previously developed by the school system. These standards, once they have been developed, have to be posted publicly and, if requested, the person who was dismissed or demoted has a right to look at all the data that the school district has in reference to her demotion or dismissal. The teacher that has been dismissed or demoted has to be compared with all the teachers in the system.

Cases have arisen subsequent to Singleton that involved teachers who were hired for specific schools. A school district would say that they had only hired her for School X. Now, that's discriminatory. You have to compare her with teachers in all of the schools and determine that she's the least qualified teacher. Of course the school superintendent has a right to get rid of his least qualified teachers when there's a reduction in staff, based on certain objective, non-racial criteria. They have to compile these records so that the HEW or the courts or somebody can look them over.

No new teacher of a different race can be hired to take the place of that teacher who was dismissed or demoted. The teacher that was dismissed or demoted, if she's otherwise qualified, has a chance to apply for that job and refuse it. And then the District Court put a definition section in its remedy: demotion includes any assignment under which that member receives less pay or has less responsibility than under the assignment he held previously; demotion also includes a position a teacher is given which requires a lesser degree of skill than the assignment he held previously or under which the staff member is asked to teach a grade level or subject other than one for which he is certified, or with which he has had substantial experience within a reasonable time period.

Another provision of Singleton, in order to cut down the identifiability of schools within a system, was to assign the teachers to schools in the same racial proportion as the system-wide ratio. If you have a 70 to 30 ratio -- 70 white, 30 Black -- each one of those schools should be represented with the same ratio of faculty. Of course, it allows for some deviation, but there should be no substantial difference in each school from the system-wide ratio -- specifically, it must be within 5%. HEW has adhered to that policy, and has required school districts to write in their desegregation plan that requirement that staff be assigned in each school to reflect the racial ratio of faculty in the system.

So the Singleton case, in effect, for the first time insured against discrimination of inservice teachers. The case is silent on the requirement of recruiting and hiring. Of course, in examining the Singleton case and all the subsequent cases, we say that if all of these safeguards were established for the retention of inservice staff it would be unthinkable to say that the court would allow ordinary erosion to get rid of the minority staff.

Once there is a determination of discrimination by the system then we have a right to ask a school system to come up with an affirmative action plan to reestablish the ratio that existed prior to this erosion. Of course, there was a case subsequent to Singleton, in which it was ruled that once a school system has become unitary, this racial ratio of the system does not have to remain stable, that it can change from time to time and that the school system can then revert to the merit system but the merit system has to work in a non-discriminatory manner. So we say that once this system becomes unitary it is like a northern school district.

It is conceivable, and I think it has sometimes happened in the case of the large southern school districts, that they have come to the point that they have desegregated their formerly unitary school district and thereafter if you get some complaints that would cause you to examine this district again, you have to go back and see if since they have desegregated they have committed de jure acts that would put them in the same bag they were in before they desegregated. This, of course, involves the same kind of analysis as is used in northern school cases.

Bear in mind, the only difference between a northern school case and a southern school case is that in the South, you have a de jure act of segregation of students and teachers by statute, whereas in the North you don't have that stututory action, but the same principle will prevail if you find de jure acts by a northern school system. In one instance, it is done by statute, and in the other instance, by a series of acts by the school system (which is an arm of the state), with the same end result of segregation, but in both instances Singleton applies, Brown applies, and all the other cases that relate to the de jure system apply.

Discrimination Against Ethnic Minorities

In the area of discrimination against ethnic minorities we find similar practices prevailing. In a number of southwestern United States districts, for example, it was not by statute that Chicanos were discriminated against, so it was necessary to go in and establish that the school district through a mode of conduct had discriminated against Chicano students and teachers. Once it is established that they have been discriminated against, they have the same type of protection set out in Brown and Singleton. I think the Corpus Christi case was one of the first to determine that Chicanos were a discriminated-against ethnic minority, though there is at least one case where they were said not to be such. When I say an "ethnic minority", I mean a minority not in the sense of numbers of students in the school district or teachers in the school district, but minority in the sense of political clout.

Their status stems in part from English language deficiencies, and even if the state did not discriminate by statute, the existence of de jure acts may have put them in a situation similar to that of many Blacks. Such discrimination was found in many school districts. Once you get over the difficulty of putting them in this southern type framework, then you have to determine what is needed to overcome these English language deficiencies. You must consider the possibility of concentrating all the Chicano teachers in the majority Chicano schools, etc.

In our enforcement efforts regarding Chicanos as with Blacks, we look not only to the Civil Rights Act of 1964 and to our own regulations and the regulation of any department that delegates this enforcement to us, but also to HEW policy. Mr. Howell discussed two such policies: the January 14 memorandum, as it relates to teachers; and the ethnic minority memorandum of May 25, dealing with English language deficiency. We also look for substantive law, case law, to the effect that in passing the Civil Rights Act of 1964 we were enforcing Equal Educational Opportunity for all students. Finally, we look to the U.S. Constitution. Our own regulation and our three Policy Statements have been circulated to school authorities and they are perfectly aware of our requirements. [Copies appear at the end of this text.]

Recent Developments

Some other cases subsequent to Singleton have held that you cannot get rid of or dismiss an otherwise qualified teacher and replace her with a more qualified teacher. Those districts say that, "Well, we're going to upgrade our system." It is evidence of a de jure act when they say, incident to desegregation, that they're going to pick this time to upgrade their staff. All of the teachers were qualified to teach prior to desegregation, and must be presumed to be still qualified. Thus courts have followed an absolute, versus a relative, standard of qualification in these cases.

In a northern case, Johnson v. San Francisco, they found de jure segregation of both children and staff, and a teacher balance plan is being required. The district has to have a plan of affirmative action to racially balance faculty. This is an example of an instance where a northern district has discriminated and is in the same bag as the southern district and Singleton applies.

In another case, the court found that in one year, from 1969-70 to the 1970-71 school year, there was a 22% loss of black teachers. How did this happen? A district gave the Graduate Records Exam to all teachers who didn't have Master's degrees and told them that they had to make a minimum score in order to be employed. The court told them, that, while the test appeared to be an objective criterion, it was not job-related. The school district had to recontact the teachers they dismissed after the 1969-70 school year, tell them to reapply, tell them that the GRE was no longer required and to notify all universities they were recruiting from that they were no longer requiring the GRE. Finally, for the 1970-71 school year the district had to hire Black teachers to repair the erosion.

Once you have that de jure finding, courts have applied various remedies such as are discussed above. Additionally, in some instances courts require the school districts to reach the same racial ratio with teachers as the ratio of children in the school system. If you have fired too many Black teachers, you rehire them, even at the expense of the more qualified white teachers that you hired. You can fire them and rehire the other teachers with back pay. We've used these devices in negotiating with school districts in trying to get plans from them. We've also required desegregating school districts to develop non-discriminatory, objective criteria for their recruitment and hiring.

It is a big problem to determine what constitute objective criteria. We say that teacher certification, experience, and degrees obtained, are the types of objective criteria that we consider. Now there are some court cases -- or at least one court case that I know of -- that says it is permissible as objective criteria to consider the ability of the teacher to relate to students, the teacher's interest in education, or any number of things that might be considered highly subjective. Surprisingly enough, the courts have not delineated for us what are the objective criteria. That is one of the difficulties of applying the Singleton rule. You have to do it on a case by case or ad hoc basis. I guess after you have been up to the court a number of times you can get a list af all of the criteria that are used and are determined by courts as being objective.

Whether they use objective or subjective criteria, in the event that discrimination is found in a school system, nothing is supposed to stop the goal of taking care of the erosion that has occurred either drastically, during one year, or systematically, over a period of years. We are requesting some timetables for these things.

Finally, we come to another problem...the people who come to us and say, "We cannot find qualified minority teachers. Where do we look for them?" We say, "Well, back in 1964-65 you hadn't had a reduction in Black teachers in the district. You used those beautiful recruitment methods of going to the Black principals as a method of certifying Black teachers." The superintendent wouldn't even bother with an interview with his teachers, but would take this fine principal's word. So in 1967 and '68 we would constantly be faced with the situation of segregated staffs and superintendents saying, "Our Black teachers are just as fine as our white teachers, and their qualifications are just as good as white teachers'." But when we visited the same district in 1969-70-71, the superintendents were saying, "No, these Black teachers aren't qualified...they came from majority Black schools or Black universities," or, "They were good teachers, but something's happened to them over the years." They say now, "We require interviews, even though this fine Black principal recommended them." We say, use some of the same recruiting policies now that you used before desegregation, and maybe you can get some of those fine teachers that you had then.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20201

MEMORANDUM

January 14, 1971

TO: Chief State School Officers and School Superintendents

FROM: J. Stanley Pottinger, Director
Office for Civil Rights

SUBJECT: Nondiscrimination in Elementary and Secondary School Staffing Practices

Title VI of the Civil Rights Act of 1964 requires that students in a school district receiving Federal financial assistance be afforded educational services free from discrimination on the ground of race, color or national origin. Since the *Bradley* and *Rogers* decisions of the Supreme Court in 1965 it has been clear that this provision precludes the assignment of teachers to public schools within the school system on a racially segregated basis. From more recent decisions of the courts of appeal, it has become equally clear that Title VI also precludes discrimination in the hiring, promotion, demotion, dismissal or other treatment of faculty or staff serving the students. This memorandum describes HEW policies reflecting more recent court decisions in each of these two areas.

The goal of HEW in rendering assistance to educational programs is to help school officials to achieve the highest possible quality of education for everyone. The elimination of discrimination in these programs is not only required by the law, but is consistent with this goal. Indeed, racial or ethnic discrimination in staffing actually deters the achievement of high quality educational opportunities.

School districts have for the past several years reported to HEW's Office for Civil Rights on the racial and ethnic composition of their staffs. It will now be HEW's policy to make further inquiry into staffing practices whenever it appears from this or other information either that a school district may be making its assignment of teachers or staff to particular schools on a basis that tends to segregate, or that the racial or ethnic composition of its staff throughout the system may be affected by discriminatory hiring, firing, promotion, dismissal or other employee practices.

Assignment of Staff to Schools

School districts that have in the past had a dual school system are required by current law to assign staff so that the ratio of minority group to majority group teachers in each school is substantially the same as the ratio throughout the school district. This is the so-called Singleton rule, enunciated by the Court of Appeals for the Fifth Circuit in January, 1970. The same rule applies to non-teaching staff who work with children.

Even though a school district has not in the past operated an official dual system of schools, its statistical reports may nonetheless indicate a pattern of assigning staff of a particular race or ethnic group to particular schools. Where this appears to be true, the Office for Civil Rights will seek more detailed information regarding assignment policies and practices. If it is determined that assignments have been discriminatory, the school district will be requested to assign teachers so as to correct the discriminatory pattern.

Hiring, Promotion, Demotion, Dismissal and Other Treatment of Staff

The reports presently being submitted to the Office for Civil Rights by local educational agencies reflect not only the assignment by race of teachers and other staff to particular schools but also reflect the total composition by race of the staff throughout the reporting school system and the hiring of teachers by race each year. With respect to the employment practices of each district it will be HEW's policy to make further inquiry into such matters when it appears (1) that there has been an abrupt and significant change in the racial or ethnic composition of the teaching or any other category of staff serving a particular school district, or (2) that the presence of members of racial or ethnic groups among newly employed staff members in any category differs significantly from their presence among qualified persons reasonably available for employment by the school district. HEW's Office for Civil Rights will ask school districts so identified to furnish more specific information concerning these practices in the following categories of staff:

1. Principals

2. Assistant Superintendents and other central office professional staff

3. Deputy, associate and assistant principals

4. Classroom teachers

5. Other professional staff for whom certification is generally expected, such as counsellors, librarians, and special education teachers

6. Other staff who work with children, such as teacher-aides and bus drivers

In each of these categories we will request information as to the identity of staff members who have been released or demoted, the reasons for release or demotion, the criteria used in selecting teachers for employment, promotion, release or demotion, and the comparative professional, educational and personal qualifications of the applicants and staff members involved.

This information will be analyzed, and, where necessary, additional investigation conducted to determine whether discrimination has been practiced. It is, of course, not possible to catalog all forms which such discrimination might take. Several of the more obvious methods of discrimination are:

1. Hiring--A school district which focuses its recruitment efforts on teacher training institutions attended predominantly by members of one race while ignoring institutions attended predominantly by members of another race is discriminating in its hiring practices. Similarly, the imposition of different hiring procedures, such as the requirement of additional personal interviews for members of one race as contrasted with others, is discriminatory. Discrimination in other features of the employment process may also be found in salaries offered, working conditions promised, training provided and tests or other qualifications imposed.

2. Promotions--The selection of teachers or other staff for promotion may be subject to racial discrimination just as the selection of teachers for employment. Any form of such discrimination would be a violation of law.

3. Demotions--The demotion of a staff member, whether involving a cut in pay or simply a change in duty, is discriminatory if it reflects a racial decision by the school administrators. Thus, if the consolidation of two schools necessarily results in the demotion of some staff members, such as department heads, counsellors and coaches, the selection of the staff members to be demoted may not be based upon race. The courts have also held that persons demoted as an incident to the desegregation process are to be given preference in future promotions.

4. Dismissals--Dismissal of a teacher for failure to meet certain standards or qualifications would, of course, be racially discriminatory if the same standards or qualifications were not applied to teachers of another race. A teacher who has been assigned to a particular school for racial reasons may not thereafter be dismissed if a reduction of force results in the closing of that school unless his qualifications for teaching are compared with all other teachers throughout the system and he has been found, under reasonable and objective criteria, to be less qualified than all teachers retained in the system.

If it is determined from the information furnished by the school district and from any other investigation that discrimination has been practiced, the school district will be requested to develop a plan for prompt corrective action. The types of corrective action required will depend upon the nature and results of the discrimination that has been practiced.

A discriminatory dismissal and its effect may be adequately corrected by reinstatement of the dismissed staff member together with the payment of any lost pay. Discriminatory hiring practices may be sufficiently corrected by adopting objective criteria and standards for future recruitment and hiring and by promptly offering positions to qualified persons who have been rejected or overlooked. In each case, however, the school district will be asked to develop and submit a specific plan for correcting the effects of the discriminatory practice and assuring against the repetition of such discrimination.

When it is clear that the effect of the discrimination cannot otherwise be corrected and the discrimination has in fact resulted in a significant distortion in the racial or ethnic composition of the staff, the school district may be asked to develop a plan designed to achieve a racial and ethnic composition of its total staff which will correct the distortion. In determining what that composition should be, consideration will be given to the past composition of the staff in each category and to information bearing on the reasonable availability of qualified teachers and other categories of staff from racial and ethnic minorities.

I have been assured by the Office of Education that it will give priority attention to requests for consultation and assistance in the development of realistic and educationally sound plans.

We in the Office for Civil Rights will be pleased to do everything possible to assist school officials to meet their Title VI responsibilities.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20201

May 25, 1970

MEMORANDUM

TO : School Districts With More Than Five Percent National Origin-Minority Group Children

FROM : J. Stanley Pottinger
Director, Office for Civil Rights

SUBJECT : Identification of Discrimination and Denial of Services on the Basis of National Origin

Title VI of the Civil Rights Act of 1964, and the Departmental Regulation (45 CFR Part 80) promulgated thereunder, require that there be no discrimination on the basis of race, color or national origin in the operation of any federally assisted programs.

Title VI compliance reviews conducted in school districts with large Spanish-surnamed student populations by the Office for Civil Rights have revealed a number of common practices which have the effect of denying equality of educational opportunity to Spanish-surnamed pupils. Similar practices which have the effect of discrimination on the basis of national origin exist in other locations with respect to disadvantaged pupils from other national origin-minority groups, for example, Chinese or Portugese.

The purpose of this memorandum is to clarify D/HEW policy on issues concerning the responsibility of school districts to provide equal educational opportunity to national origin-minority group children deficient in English language skills. The following are some of the major areas of concern that relate to compliance with Title VI:

(1) Where inability to speak and understand the English

language excludes national origin-minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students.

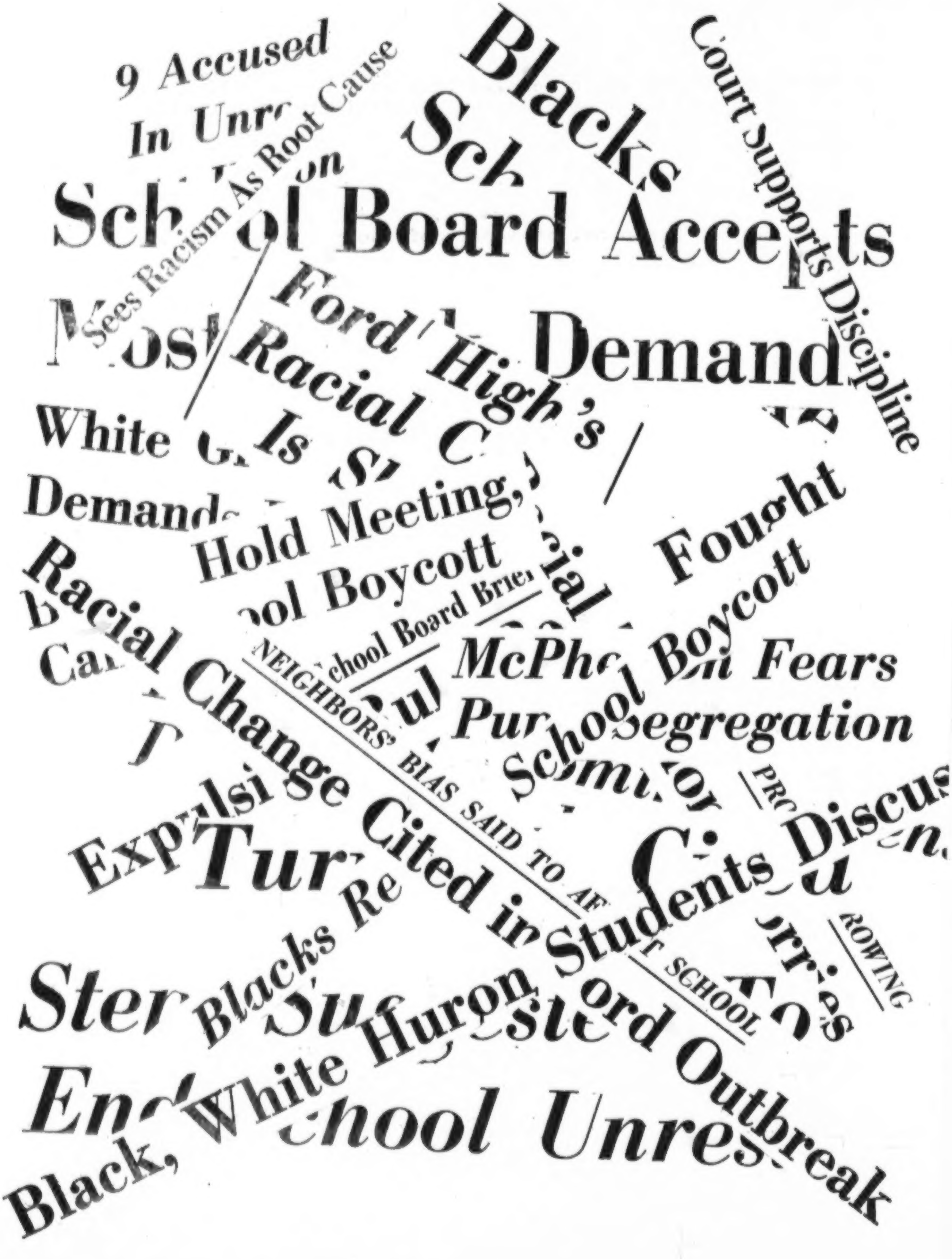
(2) School districts must not assign national origin-minority group students to classes for the mentally retarded on the basis of criteria which essentially measure or evaluate English language skills; nor may school districts deny national origin-minority group children access to college preparatory courses on a basis directly related to the failure of the school system to inculcate English language skills.

(3) Any ability grouping or tracking system employed by the school system to deal with the special language skill needs of national origin-minority group children must be designed to meet such language skill needs as soon as possible and must not operate as an educational dead-end or permanent track.

(4) School districts have the responsibility to adequately notify national origin-minority group parents of school activities which are called to the attention of other parents. Such notice in order to be adequate may have to be provided in a language other than English.

School districts should examine current practices which exist in their districts in order to assess compliance with the matters set forth in this memorandum. A school district which determines that compliance problems currently exist in that district should immediately communicate in writing with the Office for Civil Rights and indicate what steps are being taken to remedy the situation. Where compliance questions arise as to the sufficiency of programs designed to meet the language skill needs of national origin-minority group children already operating in a particular area, full information regarding such programs should be provided. In the area of special language assistance, the scope of the program and the process for identifying need and the extent to which the need is fulfilled should be set forth.

School districts which receive this memorandum will be contacted shortly regarding the availability of technical assistance and will be provided with any additional information that may be needed to assist districts in achieving compliance with the law and equal educational opportunity for all children. Effective as of this date the aforementioned areas of concern will be regarded by regional Office for Civil Rights personnel as a part of their compliance responsibilities.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INTEGRATING THE DESEGREGATED SCHOOL

INTEGRATING THE DESEGREGATED SCHOOL

Neil Sullivan *

Massachusetts Experience

First of all, let me say that Massachusetts, I think, is similar in many ways to the areas you come from, with the exception of the fact that Detroit is a much larger city than Boston. And let me also say that right now I have with me here about 50 million dollars -- I'm not quite sure which pocket I have it in -- as a result of the fact that Boston and Springfield have refused to submit an acceptable desegregation plan to the State Board of Education.

You might be interested to know that the cities of New Bedford, Cambridge, Medford, and Worcester, pretty good sized cities, some of them with populations of over 100,000, have all completely desegregated their schools, and they

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Dr. Sullivan is a Professor of Educational Administration at the University of California at Long Beach.

are coping with the subject we'll be discussing here today.

New Bedford did it by voluntary busing, and I had said that it couldn't be done. I had indicated publicly that I didn't think a voluntary plan would work. New Bedford proved that I was wrong, and God bless them. Cambridge and Worcester did it by building new schools, in drawing new district lines. Working beautifully. Medford did it by forced busing, whatever that word means. But the big cases remain Boston and Springfield.

Another little thing about Massachusetts you might be interested in. We've taken a very flexible position, or I have, as Commissioner, about school hours and the arrangement of students. One year ago, in the Commonwealth of Massachusetts, we had more riots and more schools closed in the city of Boston than probably any city in the Union. We moved to a very flexible arrangement, I guess you call it by a different name, but we gave it a title of the Open Campus Arrangement, where young men and women at the high school level could make arrangements to have a major part of their academic work in the community. Two years ago at this time we had 1,000 students on Open Campus Plan; today in the Commonwealth of Massachusetts we have 150,000 secondary students who are on an Open Campus Plan.

I read in the paper coming out here yesterday that 50 of these black students from Boston English High School this year spent their senior year over at Boston State, where some of you may have graduated. It is a predominantly white teachers college in a city that is 35% black. I watched Boston go through the routine of recruiting minorities and they did it like most cities. They took those long trips to the South, and they came back with nothing but more expenses for the city.

Recruiting in the South, if you're from Boston and Chicago, is a waste of time. You can find all the competent minority peoples in your own city. You can train them yourself. They are there in abundant numbers and most of them, of course, are students in high schools today. If you work on it and open the doors, that's the place where your recruiting will work best.

A little bit more on Boston. The ghetto in Boston is Roxbury; it's similar to Harlem and Hough and Hunters Point. It's probably more dilapidated than any of those merely because it's about 100 years older. It's an area that should be completely torn down.

I hear people say you can't get white people to go into the inner city to go to school. That is another myth. Of course, if the schools in the inner city are unsafe for whites, they're also unsafe for blacks and Puerto Ricans. So the city of Boston, with a rich endowment from the state, built a magnate school, the type which Charlie was responsible for when he was in Evanston, and like some of you have built in other parts of the country. This school (The Trotter School), a K-5 school, has a waiting list of white students trying to get into that school. A long waiting list. Why? Because there's an exciting program in the school. It's the most exciting primary-elementary school in the Commonwealth of Massachusetts. It's in the inner city, in the worst part of Roxbury.

Looking around the country a little bit, I heard, coming in here today, some of the exciting things happening, and some not so exciting, in the Michigan area and in Minnesota, and a little bit about Indiana. Things aren't moving as they should in school integration, because we have a President in the White House who's providing negative leadership. He's similar to a school superintendent who talks the thing down, who works against school integration. It is hard in this country or in a community or state where the leader takes a negative position. When that occurs, those of you who are out there fighting for quality education in an integrated fashion find it much more difficult.

But don't give up -- the day that Mr. Nixon announced his suggested moratorium on school transportation in this country, the city of San Francisco that same evening voted to move ahead and completely desegrate their junior high schools in September, '72. This is the city that completely desegrated all of their elementary schools last year, though everyone said it wouldn't work, they would burn the buses as they did in Pontiac.

So, I single out San Francisco, I single out Nashville, Tennessee, a tough city in the heart of the Bible Belt, completely desegregated last year and things are moving along nicely in Nashville. Some of you are close to Witchita, a stone's throw away in Kansas where they, too, made the decision and things are moving extremely well.

I grow tired of those school superintendents and those school committee members, and they are in large numbers in this country, who wait for court decisions. We don't need another court decision. What we need is implementation of the decisions already made -- that's what we need. What do we want? Another decision. Wait for another decision for another city.

We should do what is morally right, what is legally right, and what is educationally sound. That's what this meeting is all about, and much of what I talk about from now on will deal with the lessons learned in Berkeley.

Lessons Learned In Berkeley

Berkeley was the first city of over 100,000 to completely desegregate, and I know there are people out here who said "You can do anything in Berkeley." If you think that, you've never been in Berkeley.

Berkeley was the bastion of the John Birch Society in Northern California. When I went there, Bobby Seale was just graduating from Berkeley High School, and Huey Newton had just dropped out of school, and Stokely Carmichael was delivering his speeches along with Mario Savio. You think that the Black Panthers were gung-ho about school integration? No. They certainly weren't.

As a school superintendent I think you take political positions, and you take positions on such things as the Viet Nam war and the President in the White House and people who are aspiring for the White House because I think the young people and the teachers measure the man who serves as superintendent in terms of how much courage he displays. Does he run and hide? Does he wait for the school committee to make another one of those weather vane decisions? And then does he react accordingly? I'm afraid that all too many of our leaders take that posture in our society, and that's one reason why public schools are in trouble today. I'm not giving up, but neither am I too optimistic.

The first lesson I learned in Berkeley was that if you're going to get it done there must be commitment from the top, and that top includes the school principals. A real lesson was learned in various communities, one in New York...Those of you who have read the New York story know that the New York desegration plan was probably torpedoed under Bernie Donovan by school principals who took the literature that was prepared for the parents and students and just lost it. It never got out to the students or parents.

The second lesson -- community involvement. Some of you guys, I understand, are out right now with small group meetings in nearby towns with parents. I'm convinced that you've got to involve the community, you've got to tell them the truth, you can't kid around about it; you're honest. You go everywhere at the drop of a hat. The church becomes involved, there are weekends together. You bring the community leaders in and it becomes a team effort.

The third lesson, probably the most important of all, is student involvement; getting the kids together often. I used to go out into the schools a great deal and the one thing I made clear to teachers was that I wasn't there to supervise them because that wasn't my "bag", someone else was responsible for that. I was there to get a feeling for kids. I would go into the first and second grades and occasionally I would teach reading. I would go into the high school and meet with the classes in social science.

I got to know the kids real well. We used to meet formally in a room this size, and I had all the kids come in at different levels, second and third grade, always mixed (this was when the schools were segregated), and I'd work with the kids. We'd sing and dance together and I would join them. Then we'd talk things over together. They got to know me extremely well, and I, them. I knew them as well as I knew their parents, and I involved teachers with me, I involved principals, I involved counselors and it again was a major team effort.

The fourth lesson: we had to mandate a human relations program for the entire staff; everyone had to take a human relations course. That human relations course included in part a large amount of minority history. We brought such people as the distinguished black authors Cobbs and Greer in as instructors, and we brought in parent people and student people. We brought in philosophers from the campus of the University of California. And the course was mandatory; everyone took it.

The fifth lesson: School integration does cost money. I'm convinced of that. Certainly a complete reorganization of the curriculum must occur and in a manner that reflects the contributions of every race and not just a single race. This will cost money.

The sixth lesson was that you have to budget differently, that if you can't get more money you use the old money differently.

The seventh lesson -- you've got to break down the tracking system, if it exists. You do it for two reasons. The first reason, a tracking system isn't legally proper in this country; the courts have ruled on that. Segregation by race, segregation by ability, segregation by sex is unconstitutional. That's been tested over and over again, so you don't need another court decision.

The second reason, the more important reason, there can be no excellent education for all children if you isolate them in groups. That's been proven over and over again; that's been researched and documented. The only one, really, who finds tracking convenient is a teacher who can use the same lesson plan over and over and get the same reaction from the same group of kids. The tracking system must go for educational reasons, it must go for legal reasons, and the best way to have it go, obviously, is through working with the teachers. You don't mandate it, but you bring the teachers together and work out ways and means of eliminating the tracking system.

One way of doing it, of course, is to build in your school system models that work. One of the hang-ups of teachers is, when you integrate your schools, they say you cannot have some kids who are eight years of age who are reading at the 12th grade level, and some who are reading at the fifth grade level. Whatever it is, you're going to have a wide span. Of course you are; so develop models before you start, as we did in Berkeley, where we had family clusters of children, 5, 6, and 7, with one teacher, in a heterogeneous classroom. Another group of children 7, 8, and 9. You didn't have three years of reading level change there, you had five or six years. Teachers worked it out successfully, building programs so the day when the schools were integrated, it was no new challenge, because the model had been worked out successfully and the teachers had been using it.

Probably the easiest place of all to break down the tracking system is in the junior high schools where it generally starts. You simply never introduce it.

The eighth lesson learned in Berkeley -- that there must be a temporary assignment of the staff prior to that desegregation period. I think, by and large, around this country, and I'm not intimately associated with all of your school districts, but if I went to Baltimore or Philadelphia I would find all of the black teachers in one school and all of the white teachers in another school. That's exactly the way it was in Berkeley, that's pretty much the way it was in Oakland, that is the way it was in Los Angeles, and that's pretty much the way it was in San Francisco until a year ago.

Once again, the court has clearly spoken out on the subject of desegregation of staff. The law does not permit the segregation of staff. You desegregate, again, for educational reasons. Do you wait until the beginning of this new period? Of course you don't. In Berkeley we took white teachers from those nice neighborhood schools in the hills and we hired substitutes for them. They went down into the ghetto schools in the Bay area and they observed for a long period of time, day after day. And those black teachers from the ghetto schools were moved into the hills where they observed the white children for a long period of time. Then they were given teaching assignments on a temporary basis teaching white or black children and then moved into an integrated setting. This before school integration even took place.

Ninth -- a realignment of the staff, including the administrators. There is no question in my mind that a group of teachers who've been working in a white school, unless they're an unusual group of people, cannot handle an integrated setting without having major staff changes.

I think the best experience for many of us is a traumatic experience in a new school, with a new faculty. As a school superintendent I've grown tired over the years of the staff referring to the high school as "Mr. Brown's school". A teacher would go into a little room and close it up and say that's Mrs. Smith's room. To hell it's Mrs. Smith's room! That school and that room belong to the kids; they don't belong to a principal or a teacher. We work for the kids. We don't possess anything other than some knowledge that we should be imparting to young people.

Incidentally, teachers and administrators were told they were going to be reassigned, and they were told this by me. Told very clearly and I told it in a manner that disturbed some of them and I readily admit that I probably said it harshly. I told them if they couldn't go along with what we had planned and worked out together -- to get out. That's how I said it, plain; get out of the system. Don't stay here and screw it up because most of us in the system want it to work. If you have a hang-up about black kids, if you have a hang-up about white kids, or if you have a hang-up about working with white and black teachers -- out. Move. Plenty of jobs somewhere else. We had a reasonable turn over of teachers, I would say, and administrators, but that was necessary.

The tenth lesson -- if transportation is necessary, and quite often it's not, don't let some screwball work out a harebrained plan that's going to result in busing kids for long periods of time needlessly. Get somebody first you can trust who's a transportation expert and work out a program of transportation that's fair to all concerned. Yes, fair to all concerned; that's the one principle that must be worked out in transportation. The black kid shouldn't spend more time on the bus than the white kid. Equal amounts of time -- that's the only way to do it.

This whole business about busing is the biggest of all the myths. Kids love to ride the bus. It's the safest way to school, it's the healthiest way to school, so let's not waste a lot of time talking about that subject. But don't let someone screw it up for you.

The eleventh lesson in Berkeley -- the commitment to an integrated staff. That integrated staff must start at the top and run the entire width and breadth of the establishment. It means that you can't have just one black assistant principal or one black secretary, but you've got to look over the complement of teachers that you have and figure it out. You hire minorities in large numbers, and you hire those who are talented; you hire those who have the commitment to the cause.

The twelfth lesson -- you keep the community informed. One of the real problems I have had in Boston, and I had it to even a higher degree in Berkeley, was that I had a newspaper that distorted the truth in an unbelievable fashion. They blew up incidents that never occurred; they published things they heard on the street that were outright distortions of the truth. They published every little story they heard in blazing headlines.

How do you cope with that? You publish your own paper, that's how you do it. The first paper we published was one for the teachers, because one of the most difficult things is for the teacher to get the word. The school superintendent should be talking with teachers all the time.

You counteract a newspaper that's distorting the truth with your own newspaper. We mailed ours to every citizen in the community. To me, it was the best use of money we could possibly have made, because we were telling the truth about what was going on in the school. Each group of schools published their own newspapers.

Incidentally, I had my own radio talk show. And you say, "That's a risky thing to do!" At times I used to think so. But I used to go on the radio, and a person could call me and react in any way he wanted to. So could I. We had some interesting exchanges, but everything was open. We wrote, we communicated, we did the radio thing, we did the upside-down thing with teachers, we did it with kids, we did it with school administrators, we did it with parents. Keep the news flowing on what's going on in the schools and tell the truth. If things aren't going too well, tell that too. Just don't tell everything that's fine, let the people know if you're having some problems because you'd be lying if you didn't admit you were having problems.

The fourteenth lesson -- set aside money for research and evaluation. But don't be conned by people saying they want instantaneous improvement; no one can provide that. But you do have to know where you are when you start, where you are after a year, where you are after two years. The only way you can do that is by a very careful testing program that covers the cognitive skills and the affective areas. You can't test one without the other. I'm perfectly willing to say this: that if there is no improvement at all in achievement (and that's a big if, and I'll come back to the results in a few minutes), but if there are attitudinal changes on the part of students, and if they learn to live together, then integration is worthwhile. Because if we don't learn to live together, this democracy that we cherish is not going to survive. So the main goal is changes in the affective domain. But you certainly measure achievement. You work this out with the teachers, and if testing is properly done with the teachers being involved with the principal, it can be accepted by them, not challenged, and the results must be made public.

Fifteenth lesson -- keep checking on the parents, because the myths begin to crop up. Two myths -- the first myth is that a white flight will occur. Let's make sure that you know the facts. If people are leaving the community, find out why. The facts of the matter are that people have been leaving the cities in this country for a hundred years, and the only reason minorities remain in them is because they can't get out. Find out why people are leaving the city.

We did this in Berkeley, and we researched the thing covering a period of about ten years. We probably found 15 reasons why people left Berkeley. The 15th reason was because of the schools. The weather, the church, the neighbors, eucalyptus trees that spread roots in their cellars and caused water damage; down around 15 someone was saying the schools were lousy. But there were 14 other reasons before they got to that one. So get the truth out on that one.

The second myth -- check this one out -- is that property values will fall. You have to really watch this one.

Because I have found that some of the most difficult people, and those who are the greatest obstructionists to school integration, are the local realtors. But with realtors, check those property values. In Berkeley, property values did not fall.

The sixteenth lesson is that we should never lead people to believe things that aren't true; we must realize, for example, that violence is going to occur. We have sort of built that in. We permit people to build it in. One thing we want to know, right now, is how are things in the schools now? In the segregated schools? And then measure the situation against that. Is integration going to eliminate violence completely? Certainly not.

I want to turn now to this little document and give you the latest achievement figures on Berkeley. Before I do, a comment from this little manuscript. The final lesson, perhaps the most significant of all lessons learned at Berkeley, was that the best form of compensatory education for minority children -- the only one that worked in Berkeley -- is school integration. The only one. We had, along with other schools systems, poured millions of dollars into remedial programs and purchased all sorts of equipment. We even bought talking typewriters. We lowered class size, we had done everything possible to stimulate, to challenge, to motivate the minority children. It didn't work. The results of these efforts were generally unsatisfactory.

What Berkeley taught the profession in the late '60's was what I knew intuitively for years; the best form of education, and the one that works in America, is when rich and poor, black and white, learn together in the same educational setting.

Let me make one thing abundantly clear here this afternoon; I was a superintendent of schools in an all black school district. Achievement was extremely high in that school district. I was also the school superintendent in one of the most wealthy school districts in America -- Old Westbury, in New York. These kids also, achievement-wise, did an outstanding job. And I can tell you, in the black school district in the South and in the white school district in the North, the attitudes were questionable at best. I'm not suggesting that children cannot learn in isolation. I am clearly indicating, though, that the minority children in Boston, the Italians in East Boston, and the Irish in South Boston, and the black kids in the inner city of Roxbury aren't learning with the millions of dollars poured into those schools. There are a whole series of reasons why, but don't get the idea that there's anything genetically deficient about the Irish, Italians, the blacks or the Puerto Ricans; let's get that thing straightened out. Let's face it. Poor, hungry kids will always have difficulty learning.

The children in Berkeley, once schools were integrated, made year for year progress in achievement, and had never done it before. Year for year progress. And for the first time the results indicate the children within the Berkeley schools are achieving above national norms.

I have here something that was taken out of the Berkeley Gazette, I think ten days ago. This is an editorial. I'm going to read it to you.

> "Berkeley Unified School District Scores A Plus In Reading
>
> This paper has often criticized the Berkeley Unified School District and its approach to the education of our children. But a fact has come to our attention which we feel deserves our and the community's praise. The State Department of Education of California recently reported that five of Berkeley's desegregated primary schools -- Emerson, John Muir, La Conte, Washington, and Whittier -- were listed among the top 30 of California's nearly 12,000 schools for outstanding gains in reading over a three year period. This we believe is at least partial indication of the district's claim to providing quality education in an integrated setting. These results from the state's mandated tests recorded over a two year period ending last May for third graders is definitive proof that the schools are delivering basic skills to at least some youngsters."

I think that's pretty good, especially when you consider that there are only six desegregated primary schools in Berkeley. So out of 12,000 schools in California, five out of six in Berkeley made the list, with 43% black kids.

Finally, I learned a couple of personal things. First that the change in administrators, particularly at the top of the local school system, is healthy and should occur about every five years. One man can move an objective, a program just so far in any given period of time. A new personality, philosophically tuned to change, can take over, take a fresh look at the challenge, bring new techniques to cope with the emerging needs and as a result, get things moving again. This occurred when I went to Berkeley, it occurred when I left.

The second lesson I learned involved the state itself, and how a chief state school officer can help or hinder a local school district bent on effecting progressive change. It was a particularly meaningful lesson and it still serves as a reminder in my relationships now with school superintendents in Massachusetts.

I must report that such was not the case in California. From the moment I left Prince Edward County and my black southern brothers, the state superintendent of schools played the role of antagonist in an effort to destroy everything I was attempting to do. The restructuring of that city's system has undoubtedly contributed to the restructuring of the entire social system and the former state superintendent could have played a positive role with Berkeleyans in that venture. It was his mishandling, probably, of those people on the Berkeley scene, his tremendous distortion of the truth, that led to his final defeat in the election of a black state superintendent by the name of Wilson Riles.

The changes in Berkeley were brought about by men and women who followed their consciences, who didn't wait for concensus to develop, but moved without concensus. They made momentous decisions, they took tremendous risks. On my own part, I could do no other. My commitment to the future of America, its dreams and promise, was and is total.

History will be the final judge of the Berkeley experiment, and I rather think she will judge kindly. Personally, I chose the path of action my conscience dictated. And that conscience obviously was warped, maybe out of shape, by the cruel assassination of three of the people who were instrumental in my going South, and two of them -- Bobby Kennedy and Martin King -- remained close to me in Berkeley.

Robert Frost must have faced the crossroads, too. And he said it this way:

> "I shall be telling this with a sigh
> Somewhere ages and ages hence:
> Two roads diverged in a wood, and I --
> I took the one less traveled by,
> And that has made all the difference."

It's made a hell of a difference to me because I've met people like Chuck Moody and Bob Green and Martin King and Bobby Kennedy and a lot of beautiful people. It's been a pleasure sharing some of these thoughts with you this afternoon.

Excerpts From

ACHIEVING EFFECTIVE DESEGREGATION: A HANDBOOK

by Al Smith, Anthony Downs and M. Leanne Lachman

Ben Williams*

THE BASIC NATURE OF EFFECTIVE DESEGREGATION

A. What is Effective Desegregation?

Effective desegregation is a process of educational change which eliminates any inequalities in the educational opportunities provided by the state in a public school system which are caused by race, color, or nationality. This process involves three separate elements, all of which are essential to its success. They are (1) meeting specific desegregation requirements established by the Supreme Court, (2) avoiding any undue disruptions in school and community life, and (3) achieving the positive goal of quality unified education for all students.

Mr. Williams is Director of a Title IV Desegregation Institute at National College, Evanston, Illinois. Mr. Williams's transcribed remarks were unavailable for reproduction, but he recommended the inclusion of these excerpts from the above-titled handbook originally prepared by the named individuals and Real Estate Research Corporation for the U.S. Office of Education and the Cabinet Committee on Education. The handbook is now being published by Lexington Books and will be available in early 1973.

B. Detailed Explanation of This Definition

*Process of educational change: Effective desegregation is not a single event, or a one-time shift in school conditions. Rather, it is a whole series of activities, events, and changes occurring over a long period of time -- at least several years. Eventually, this process will gradually merge into the general educational process.

In almost every school system, effective desegregation requires many fundamental changes in previous conditions. These changes involve not only school attendance patterns, but also the attitudes, beliefs, and behavior patterns of both majority-group and minority-group students, teachers, administrators and parents.

*Which eliminates any inequalities in...educational opportunities...caused by race, color or nationality: Up to now, the Supreme Court has not required public school authorities to eliminate inequalities in educational opportunities caused by factors other than race, color or nationality, even if state action outside school systemes contributed to those causes.

*In the educational opportunities provided by the state: The Supreme Court has not stated that school systems must act to create equal educational results or even equal education -- but equal educational opportunities. This is a highly ambiguous term. However, most experts believe it means at least equal resources devoted to education per pupil regardless of race. In our opinion, educational opportunities offered to different students are not equal insofar as state action is concerned unless the following three conditions are all met:

1. The quantity of publicly-supplied educational resources made available to each student is approximately the same.

2. The quality of those resources is approximately the same.
3. Those resources are adapted to the particular needs of each student to approximately the same degree.

C. The Basic Purpose of Effective Desegregation

The basic purpose of school desegregation is to insure that every school provides "equal educational opportunities" to all who attend it.

Both scientific research and common sense prove that equality of opportunity in any area of life is not something which a person can create himself; it depends upon the attitudes and behavior which others adopt towards him. The "human damage wrought by past segregation" which President Nixon mentioned took place because one group of people treated another as though they were inferior. Psychological and educational research has proved that such treatment, repeated often enough by persons considered significant by those affected, tends to act as a self-fulfilling prophecy. It causes those treated as inferior to feel rejected and lose confidence in their own abilities. As a result, they fail to develop a strong motivation to perform well, or high expectations concerning what they can do. Thus, treating others -- especially children -- as though they were inferior often causes them to exhibit inferior performance.

To give all such disadvantaged children -- not just minority-group children -- what President Nixon called "that equal place at the starting line his parents were denied," and to instill in each such child "the pride, the dignity, the self-respect that are the birthright of a free American," members of the dominant groups in public schools must treat both lower-income white children and minority-group children with respect and dignity, and with positive expectations about their abilities and worth. This will require certain changes in attitudes, behavior, and educational content closely related to those necessary for effective desegregation. Thus, many white Americans would benefit from the very same type of changes in public education and in the behavior of the dominant groups in public schools that are needed by minority groups.

Regarding such groups, desegregation of public schools cannot become truly effective unless there are significant changes in the present attitudes and behavior of many white students, teachers, and administrators toward minority-group students, teachers and administrators. Thus, *effective desegregation is not just a matter of physical proximity* among members of different groups in the same schools. *It also requires that those schools create a positive atmosphere* in which American children from all racial and ethnic groups, and all economic levels, can develop the basic attitudes of both self-confidence and mutual respect and understanding that are vital for the successful operation of our democratic society.

Therefore, efforts to achieve effective desegregation cannot be considered successful merely because children of both majority and minority groups are attending the same schools. As President Nixon put it, "From an educational standpoint, what matters most is not the integrated school but the integrated classroom."

The degree to which desegregation in a particular school succeeds in meeting some of the other criteria of effectiveness -- such as avoiding violence and any decline in academic performance -- will be greatly influenced by the nature of inter-group relations within that school. If minority-group children continue to be regarded as inferiors and rejected, however subtly, then trouble is very likely to occur. When it appears -- in the form of protests or violence or declining academic achievement, many will blame desegregation itself. But the first cause to look for is the way the minority-group has been treated after physical desegregation took place. When both majority-group and minority-group children share the same schools, it is no longer possible for the majority group to escape tasting the fruits of its own treatment of the minority group.

D. Achieving Quality Unified Education

Another basic element required for effective desegregation in public schools is the most important of all, because its achievement is the real purpose of desegregation. It is the provision of quality unified education to all students in the public school system concerned.

Analysis of the many sources used in this study indicates that: Quality unified education in desegregated schools must be based upon a combination of three essential ingredients: (1) genuine unity of purpose, efforts, and basic values within the system and within each school, regardless of race, color or nationality; (2) positive appreciation of diversity concerning the talents, capabilities, cultural values and approaches of different individuals and groups, also regardless of race, color or nationality; and (3) constructive inter-group activities that generate mutual respect and understanding among members of both majority and minority groups in each school.

This combination forms the affirmative aspect of effectively desegregated education, as contrasted with the essentially negative nature of the second element described above. Without these positive ingredients, the educational opportunities offered in desegregated schools to majority and minority-group students cannot really be equal.

What do genuine unity and positive appreciation of diversity, and constructive inter-group activities really mean concerning desegregated education? Genuine unity means treatment of all students and teachers in each school as equally-valued members of a single whole which derives its identity from all of them, and serves the interests of all rather than just one segment.

Achievement of genuine unity requires a strong positive effort by school administrators and teachers to overcome the psychological and other remnants of many decades of racial separation. For desegregation is indeed a fundamental change in the educational situation of any school system, especially one with relatively large numbers of minority-group children.

A second critical ingredient in effectively dealing with the new situation caused by desegregation is positive appreciation of diversity. This means the clear and open recognition that many different talents, capabilities, occupational interests, cultural values, and personal approaches to life are desirable in a democratic society, and must therefore be valued and encouraged in the public school system.

Two other reasons for positive appreciation of diversity are more directly related to achieving effective desegregation. The first is the need to create a supportive educational environment for minority-group students so as to improve their academic performance.

Positive appreciation of diversity is also essential in assisting minority-group members overcome the feelings of powerlessness and inferiority derived from their historically low-status position in America. This requires a clear recognition of minority-group cultural achievements, identity, and values by all important groups in the school system -- including majority-group students, teachers and administrators.

Some minority-group members believe that just appreciating diversity is not enough to insure equal educational opportunities for minority-group children. Rather, they feel the historic powerlessness of minority-group members over their own conditions of life can be meaningfully overcome only if they play a significant role in shaping educational policies and programs in public schools. Professor Edgar Epps expressed this view as follows:

> "Effective desegregation requires that minorities be assured an influential role in educational decision-making. This includes school personnel policies and practices, attendance policies and practices, pupil placement procedures, disciplinary policies and practices, curriculum, student elections and extra-curricular activities, budgetary matters, and educational objectives."

The third necessary ingredient of quality unified education consists of constructive inter-group activities. They are all forms of behavior in which members of both majority and minority-groups participate together in an atmosphere that creates mutual respect and understanding among them. Such behavior can include normal classroom activities, assemblies, field trips, work experiences, special academic projects, and inter-groups meetings or seminars. The most important will usually be classroom interaction throughout the day in classes containing members of both groups learning together.

E. Principles Concerning the Achievement of Effective Desegregation Within the Schools

a. Racial desegregation is such a significant change in many formerly-segregated schools that they should be regarded as truly new schools. This is particularly important where desegregation has resulted in many minority-group children attending formerly all-white schools, or many white children attending formerly all-black schools, but it is basically applicable to almost every desegregated school.

To create genuine unity in a desegregated school with a sizable fraction of both whites and minority-group students, it is almost necessary to give that school a new name, new colors, and new team names so that both groups will be on the same footing in regard to the school's identity. Then both groups can begin establishing loyalty to the same entity, and it will impart equal status to each of them. If possible, student leaders of both groups should be consulted in creating this new identity which may be formed from an amalgam of the colors and symbols of the schools both groups formerly attended. If a new identity of this type is imparted to the school, this will dramatize the importance of desegregation to students, staff, parents and the entire community.

b. Desegregation creates a greater need than ever in schools to emphasize certain non-academically oriented functions of education for children. These include the building of confident self-images and feelings of self-respect, the development of respect and consideration for others regardless of their race or social status or academic skills, the ability to live and work in harmony with others who are "different" from oneself, and the development of familiarity with and skills in democratic decision-making. These important purposes have often been unduly subordinated to imparting academic skills and preparing a selected group of students for entry into college. However, there are three reasons why such non-academically oriented purposes need to be emphasized in a desegregated school.

First, many of the students in this school have suddenly transferred from some other school that they had traditionally attended, so they naturally feel somewhat uprooted and anxious. Second, the new situation of attending school with members of another race traditionally separated from one's own has a natural tendency to raise anxiety among all students. Third, many white and minority-group students come from disadvantaged backgrounds that have not prepared them well for coping with a curriculum heavily oriented towards college preparation.

As a result, if desegregated schools do not concentrate very intensely upon performing the non-academically-oriented functions described above during at least the first year or so of desegregation, they will create attitudes and behavior patterns in many students that will discourage good academic performance in the long run.

c. *Desegregation reinforces a need for greater diversity of curriculum content and value acceptance in American public schools that has already been generated by other cultural and social forces unrelated to race.*

d. *Effective desegregation cannot be achieved unless the school administration itself creates a powerful example by providing equal opportunities for all its staff members, regardless of race, color or nationality.* Studies of the methods of desegregation considered most effective by many school administrators and education experts indicate that direct personal contacts among members of different racial groups are the single, most powerful means of improving race relations. In contrast, appeals to general principles of human equality are ineffective. In short, actions speak louder than words. This principle has the following corollaries:

1. Effective desegregation within the schools is seriously undermined if a school district discharges a disproportionate number of minority-group teachers and staff

members as part of the desegregation process. The replacement of Negro principals, coaches and teachers by whites who are no better qualified (if as well qualified) is a striking message to the student body and the entire community that top-level school officials consider minority-group members inferior to whites, regardless of what they say about racial equality. When desegregation of schools begins this way, it is difficult to establish a climate of true equality of opportunity credible to the minority community.

2. Similarly, school administrations must assign staff positions of importance to both white and minority-group members and have teachers from both groups teaching students from both groups, if they want to establish an example of equal opportunity for their students. Always having black staff members act as "assistants to" and never as superiors to whites, or never having black teachers in mainly-white classrooms, tends to undermine achievement of real equality of opportunity.

3. Where teaching and administrative staffs have much lower proportions of minority-group members than the student enrollment in a district, it may be desirable to deliberately recruit a disproportionate number of new minority-group staff members in order to raise their representation on the staff closer to that of the student body. It is especially important to have a significant number of minority-group men on the staff to provide models for minority-group boys.

e. Within the school system, encouraging at least some active participation of students, teachers, other staff members and parents in both the preparation and implementation of specific desegregation plans is the most effective way to improve the quality of those plans and their acceptance by the people they affect. In almost all human activities, those who are responsible for accomplishing any task will do so much more enthusiastically if they have helped design the task than if they are simply handed orders and told to execute them. Because of the complexity of desegregation planning, and the need to avoid generating excessive controversy in the initial planning process, such participation should often be restricted at first to a few key leaders from each group. However, if those leaders are well chosen, their participation in designing the plan will greatly enhance its legitimacy in the eyes of everyone else. Moreover, their suggestions will usually increase the plan's sensitivity to the interests of all the groups concerned. It is particularly important to obtain active participation of minority-group students, teachers and parents in the planning process. Their participation is both a vital symbol of their newly-equal status in the school system, and an effective means of insuring that minority-group desires, fears, and interests are given adequate weight in the formulation of the plan itself.

The use of participatory planning within the school system will represent a major change in established behavior for many highly-centralized school districts.

f. The development and promulgation of clear and explicit rules concerning student and teacher behavior in all facets of school life, especially classroom discipline, should be completed as soon as possible in order to reduce uncertainties within the school system. Copies of such rules should preferably be passed out to all students on opening day; and certainly not more than ten days later. Students experiencing desegregation for the first time are especially uncertain and confused about what behavior is expected of them, and what they can expect from members of groups with whom they have never before attended school. Therefore, it is of critical importance to set forth in writing simple and impartial rules applicable to most situations likely to arise in normal classroom and extra-curricular activities. Moreover strong efforts should be made to insure that all students and parents read and understand such rules so that no incidents occur out of ignorance.

g. Students' disciplinary problems and practices are a major cause of both uncertainty and feelings of ill will in desegregated schools for white and minority-group students and parents alike. In addition to clear and explicit rules regarding disciplinary matters, school officials must provide strict impartial treatment regardless of race (though taking into account other personal traits), swift disciplinary action, and constant accessibility of top school officials (especially principals) to students, teachers, and parents for discussing disciplinary action and airing of grievances. It is particularly important that incidents that reputedly involve unfair treatment because of race or color be quickly investigated and followed up with either corrections of distorted views or remedial actions, as appropriate. Such vigilance is necessary to prevent rumors of race-related conflict or prejudicial treatment from spreading through the community, and to establish a reputation for firm fairness among all groups. Furthermore, teachers who are not skilled at handling severe disciplinary problems should be able to receive immediate assistance from higher-level staff personnel specializing in such problems.

h. Desegregation creates a need for most school principals to shift the nature of their roles somewhat by spending more time in direct contact with students, teachers, and parents and less on administrative matters. School boards and superintendents should be aware of this need and support proper responses to it.

i. Although officials in desegregation districts should make every effort to avoid potentially inflammatory incidents in or around the schools, they should also be well-prepared in advance to cope with such incidents if they happen for sooner or later, they usually do.

First, if law enforcement action is necessary, the local authorities should be called upon to act immediately, but in a racially impartial way as previously agreed upon in discussions with school officials. Second, the local media can present the facts in a calm manner, rather than in "scare" headlines. Third, school officials can use their previously-established informal communications networks including a rumor center, to get the word out to both whites and blacks about what really happened, and how its causes were in fact related to racial tension, if they were. Fourth, school officials can meet directly with any aggrieved parties and with anyone who feels that his or her children are "threatened" by remaining in a school where "such things happen." If school officials have prepared all their supporters in the community for rapid action in the event that such an incident occurs, they can effectively counteract it and dampen untrue rumors very rapidly before they have damaged the acceptance of desegregation already built up throughout the community.

F. Conclusion

In most desegregating districts, the decision to desegregate was forced upon the community by federal court order, against the desires of the dominant elite and much of the population. It is easy, perhaps natural, for the attitudes of school officials and many citizens towards desegregation to be heavily influenced by this coercive origin. Yet the Supreme Court's consistent rulings on this subject surely indicate that once a district has been ordered to desegregate, the process becomes inevitable in that district, in some form or other.

If school officials and the local citizenry want to gain the greatest possible benefit from their school system, they will seek to make that form effective desegregation. The basic perspective most likely to enable any district to achieve effective desegregation is viewing the entire desegregation process as a positive opportunity to improve the quality of education offered in the local schools, not only for minority-group children, but for everyone. If the principles described in this chapter are followed, a significant improvement in educational quality should accompany desegregation. In contrast, if district officials take a basically negative viewpoint towards desegregation, its occurrence may not help the quality of their schools. The more negative their perspective, the less likely they are to gain any benefits from desegregation. The more positive their perspective, the larger their likely benefits will be.

ABILITY GROUPING: STATUS, IMPACT, AND ALTERNATIVES

Warren G. Findley

How widespread is the use of ability grouping in the public schools of the United States? To what extent do tests represent an integral feature of ability grouping plans? What are the effects of ability grouping on the scholastic achievement and on the personal and social development of students so grouped? Is ability grouping likely to result in ethnic and socioeconomic separation within the school? What have test publishers done to determine and/or ensure the usefulness and the fairness of their tests for students who are culturally different? What have researchers reported concerning the reliability and validity of tests they have used with the disadvantaged student? What are some of the alternative strategies to ability grouping that have proved to be effective in the improvement of instruction?

These questions were among many to which answers were sought by a group of specialists in educational measurement commissioned in late 1969 by the U.S. Office of Education to study the status of ability grouping in American public schools and its impact upon the academic and affective development of school children (Findley and Bryan, 1971).

Ability grouping, as defined in that study, is "the practice of organizing classroom groups in a graded school to put together children of a given age and grade who have most nearly the same standing on measures or judgments of learning achievement or capability." Grouping and regrouping within a classroom for instruction in particular subjects is not considered to be ability grouping in the sense of this definition.

Dr. Findley, an authority on educational measurement and evaluation, was a principal investigator along with Miriam Bryan in the study Ability Grouping: 1970. The above is a summary of that study prepared by Ms. Bryan for ERIC and included herein on Dr. Findley's recommedation.

Ability grouping has been a topic of debate for more than half a century. The issue has, however, been brought into sharper focus during the last several years by three developments: (1) the launching of Sputnik and the consequent emphasis on special education for students with superior capabilities to meet the need for highly trained scientists; (2) increased attention to special education for the mentally and physically handicapped; and (3) emerging concern for equality of educational opportunity for all children, with obvious implications for the improvement and enhancement of that opportunity for those children to whom it has previously been denied.

In spite of the admission that homogeneous grouping by ability across the subjects of the school curriculum is impossible and in spite of conflicting evidence gathered over the years as to the benefits of ability grouping, such grouping is widely practiced in the nation's public schools. While grouping occurs in school districts of all sizes, it is especially characteristic of larger school systems; and while done at all grade levels, it is more common in the higher grades than in the lower grades. There is proportionately more grouping in the Northeast and Middle West than in other parts of the country.

While a relatively small proportion of schools rely on test scores alone for ability grouping, virtually all ability grouping plans depend on tests of aptitude and/or achievement as an integral feature. Findley and Bryan (1971 found that test scores alone constituted the basis for grouping in 13 per cent of the school districts reporting, but were among the multiple criteria reported by 82 per cent. Other criteria included teacher, counselor, and/or principal judgment, school grades, and student and/or parent interest, or a combination of these.

Although ability grouping is widely approved by school administrators and school teachers, opinion polls show that an overwhelming number of teachers express preference for average, mixed, or superior classroom groups over classes of low ability, in which emotional disturbance and rebellious behavior, as well as poor achievement, are likely to abound. Research on "streaming" (ability grouping) in England's schools indicates that the most detrimental effects occur in "non-streamed" classes taught by "pro-streaming" teachers. This generalization could apply equally well to American schools.

Early research studies on ability grouping were almost entirely concerned with the effect of grouping on academic achievement. While the evidence, then as now, was conflicting, the earlier studies more often than not reported gains by low groups and losses by high groups when compared with similar students taught in heterogeneous classes. More recent studies tend to show that separation into ability groups, when all children involved are considered, has no clear-cut positive or negative effect on average academic achievement, and the slight trend toward improving achievement in superior groups is counterbalanced by poorer achievement in the average and low groups, particularly the latter. One possible explanation for this difference is that in the earlier period the prevailing emphasis in instruction was on drill, with strong academic motivation accepted as a favorable but not a necessary characteristic, while today both strong academic motivation and academic achievement are emphasized; another is that low-achieving groups contain far more children of minority and low socioeconomic groups today than they did earlier, when the comparisons were between groups within a narrower range of ethnic and socioeconomic variation.

Research evidence regarding the effect of ability grouping on the affective development of students has, until recently, been very thin, perhaps because emotional and social growth is more difficult to assess than intellectual growth. As with the studies of impact on achievement, there has been little uniformity among the findings reported for the research studies that have been made. However, much of the evidence, especially the more recent evidence with ethnic and socioeconomic overtones, supports the generalization that the effect of ability grouping on the affective development of students is to reinforce favorable self-concepts in those assigned to high achievement groups and to reinforce unfavorable self-concepts in those assigned to low achievement groups. Low self-concept operates against motivation for academic achievement in all students, but especially among those from minority groups and lower socioeconomic backgrounds.

Most recently, researchers have become concerned with the effect of ability grouping on ethnic and socioeconomic separation. Here the evidence has been more conclusive. Students from minority groups and from unfavorable socioeconomic backgrounds tend to score lower on tests and to be judged less accomplished by teachers than students from middle-class homes. To the extent that these students are over-represented in low ability groups, then, they are being made to suffer the unfavorable results of ability grouping. A grouping plan which creates classes where disadvantaged students are in the majority deprives them of the stimulation of middle-class children as learning models and helpers, and commonly produces poorer achievement on their part. The greatest positive impact on the school learning of disadvantaged children occurs when the proportion of middle-class children in a group is highest.

Children of many minority groups come disproportionately from lower socioeconomic backgrounds. The disadvantages of their backgrounds are further compounded by language disabilities. For some of them, English, in which teaching and testing are generally done, is a "second language"; for others, the language patterns differ markedly from "standard American English." Language disabilities not only have the direct effect of making learning more difficult; they have the indirect effect of lowering self-concept because of frequent correction.

There have been no studies to date of the reliability and validity of tests administered to culturally limited populations for the specific purpose of ability grouping. As a matter of fact, until recently few publishers have studied the general usefulness of their tests with disadvantaged students. Now systematic efforts are being made by test publishers and research agencies to review present test offerings and to introduce new emphases to meet the particular problem of assessing the capabilities and achievement of the disadvantaged group.

The research that has been done to date shows that standardized aptitude tests, as they are currently constructed, are no less reliable for disadvantaged students than they are for others. They do, however, tend to overpredict for the disadvantaged group; that is, the disadvantaged student may not perform subsequently as successfully as his test scores indicate that he should. The same findings, in a slightly more limited way, apply also to standardized achievement tests. This is not to say that certain items in a standardized test may be more easily answered by students of one culture than by those of another, but, rather, that minority students who select the intended responses do not always perform up to expectations. The evidence that tests standardized on other populations tend to overpredict the subsequent performance of disadvantaged students and, hence, are not unfair to them, is less than comforting. The challenge is to develop ways of describing learning progress directly rather than to settle for measures that are "fair" only in the sense that they reflect "fairly" the results of educational disadvantages.

Generally speaking, researchers are not studying or trying out and evaluating tests. They are studying other matters and, with few exceptions, accept uncritically the standardized test and/or use it as the best available instrument at hand. In the search of the literature concerning the use of tests in ability grouping and, especially, with the use of tests with the culturally deprived, several misuses of tests were noted. Among these, the following should be mentioned: (1) assuming that a test designed for students of a given age or of an estimated ability level can be used indiscriminately with students of different ages and/or experiences; (2) modifying the test in some material respect, but still applying the regular norms (for example, changing items or answers because of local circumstances; or translating the entire test into another language); (3) testing so early in preschool programs that culturally deprived children are not even ready to manipulate the test materials; (4) testing so early in preschool programs that there is no opportunity for children with limited backgrounds to "learn" the abilities tested; (5) using tests written in standard American English, with heavy emphasis on vacabulary, for students for whom this is a second language or who speak in a particular dialectic style; (6) testing very small numbers of students over a very short period of time; (7) failing to follow through for two, three, or four years or more; (8) interpreting scores of individual students on short subtests when reliability estimates make it impossible to trust such interpretations; (9) treating different measures of learning ability as though the results on them were comparable; and (10) attaching the same importance to predictive validity without intervention (in the form of compensatory training) as with it.

The research concerned with ability grouping and with the procedures for the use of tests in grouping students for learning has provided only limited information. The design for the research procedures, the selection of tests, and the interpretation of test results have frequently been questionable. Most important, the research has produced inconclusive and conflicting results. This applies equally to the research findings concerning the advantages and disadvantages of ability grouping and to those regarding either the validity of currently available tests for use with culturally limited students or the validity of the interpretations of the test results for such students.

If, then, present ability grouping practices seem inadequate, what alternative strategies are there? The six suggestions which follow are not exhaustive of all possible alternatives, but they are judged to be the most promising for the promotion of learning:

1. Individualized instruction. There are almost as many definitions of individualized instruction as there are "authorities" defining the term. It is thought of here as instruction of the individual student, once his characteristics have been defined, by the pre-

scription of sequences of learning experiences leading to the mastery of basic skills and structural knowledge.

2. Heterogeneous grouping. This involves the putting together, in unselective fashion, of students who may vary extensively in age, experience, and knowledge and may, therefore, have opportunities to learn from one another that are not always provided by homogeneous grouping. Heterogeneous grouping of this kind is practiced in the nongraded school.

3. Stratified heterogeneous grouping. Grouping of this kind -- notably the Baltimore plan of stratified heterogeneous grouping by tens -- takes into account the concern for curtailing extreme heterogeneity, while allowing for enough diversity to give leadership opportunities in each class and avoiding the concentration of defeated and stigmatized students in a low group almost impossible to inspire or teach. In the Baltimore plan, ninety students ranked in order of excellence on some composite -- a standardized test battery, for example -- are then subdivided into nine groups of ten each. Teacher A is given a class consisting of the highest or first ten, the fourth ten, and the seventh ten; Teacher B has the second, fifth, and eighth tens; and Teacher C has the third, the sixth, and the ninth tens. In this kind of grouping there is no top or bottom section; each class has a narrower range than

the full ninety students have; teachers can give attention where it is needed without feeling that there are extremes whose needs are not being met; no teacher has to teach a class of disruptive children who lack both motivation and capability.

4. Team teaching. Several different models for team teaching have been developed. Each model embraces the concepts of individualized instruction, mastery, and differentiated staff working under the leadership of coordinating master teachers. Students who need to learn the same tasks may work in groups assigned to a designated teacher for the purpose of learning the special tasks. The grouping is informal, ad hoc, and of short duration. Such grouping promotes the effective utilization of personnel and resources, and increased learning by the individual student, without the detrimental effects of homogeneous grouping.

5. Student tutoring. In student tutoring plans, top students within a class may help those having difficulty with various subjects; or older children may be "imported," and perhaps paid, to tutor younger children who are having difficulty in learning the basic skills. Such tutoring works to the advantage of both groups of students. In fact, tutors who were themselves academically retarded have been found to gain even more than the tutored.

6. Early childhood education. Such education applies to the provision of opportunities for all children, especially those in need of compensatory education, to enjoy intellectual stimulation in a supportive emotional climate, at least from Kindergarten at age five and somewhat earlier when possible. Competence generated by the nature of early stimulation should increase the readiness of the children to participate in the conventional schooling of the primary grades.

Taken together, these alternative strategies constitute a constructive challenge to the uncertain advantages and the harmful effects of ability grouping on academic achievement, affective development, and the ethnic and socioeconomic separation of children. In each of them, tests and other evaluative measures may be used constructively if they are used with care and caution.

In conclusion, the following recommendations are offered: (1) Ability grouping, as defined, should not be used; however, flexible grouping within classes may be used to advantage when the information gained by testing and/or observation is the first step in a program of diagnosis and individualized instruction. (2) In any grouping plan, provision should be made, as part of the instructional program, for frequent review of each student's grouping status. (3) Alternative strategies for ability grouping should be explored and exploited for their usefulness in promoting learning. (4) Favorable self-concept should be a goal in itself, but it is also a supportive factor in learning. An attitude of firm confidence and hope by the teacher, fundamental to effective learning, should be conveyed to every student. (5) Teacher training should include an emphasis on welcoming diversity in children, especially with regard to language and customs of minority groups, and on teaching children to prize it in each other. (6) Finally, steps should be taken *as early as possible* in each local situation to promote unitary school populations in each district and in each classroom. Action to improve instruction by any of the alternative strategies to ability grouping will be effective in proportion to the extent to which they can be applied before a district or city has become almost completely an ethnic and/or a socioeconomically limited population.

DISCIPLINE IN DESEGREGATED SCHOOLS

Leslie Bobbitt *

I have been advised that my objective for the next half hour is to put discipline in desegregated schools in perspective. I am not sure I can do that, but I will share with you some thoughts on discipline that have emerged as Charlotte-Mecklenburg has gained experience as a totally desegregated system.

Background

Perhaps a little background information will indicate to you the extent and context of this experience. Charlotte-Mecklenburg is a consolidated city-county system of 103 schools and about 80,000 pupils. Court ordered total desegregation became a fact for the 1970-71 school year. Black-white ratios ranged from about 20-80 to 40-60 in all but two or three schools which had a substantially lower percentage of Blacks. For the 1971-72 school year a drastically altered pupil assignment plan was used. It held the racial ratios almost constant but, generally, reduced the busing distances, produced an almost pure feeder system, and assigned almost half of the pupils to different

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schools two years in succession.

Similarities in Discipline, Before and After Desegregation

During these two years we have realized, of course, that many behaviors which sometimes lead to discipline problems are the same that occurred in prior years. Inter-personal frictions develop into arguments and sometimes into fights. Boy-girl awareness sometimes brings inappropriate or unacceptable behaviors which are seen as intolerable. Pupil boredom born of irrelevant curriculum or ineffective teaching styles leaves a behavioral vacuum which is at best occupied by daydreaming or more annoyingly by behavior which distracts or disrupts others' learning. Youth demands for involvement in decisions which affect them had already been prodded into being by the civil rights movement and would have developed with or without desegregation. Pupil pre-occupation with unfulfilled basic needs such as food, sleep, affection, recognition, and self preservation has always been in conflict with the school's expectation that pupils will be alert, motivated, interested and prepared to learn to read, write, and figure. This conflict continues in segregated or desegregated settings. Inflexible, lock step expectations that require pupils to move by the numbers and to learn a uniform course of study at a uniform pace are not realistic for many.

It is true, however, that desegregation intensifies some of these problems. When the fight was between whites or Blacks, it was dealt with matter-of-factly as an unacceptable but not unexpected or intolerable behavior. When the fight is between white and Black, it is an inflamatory racial incident. When the Black boys and girls or white boys and girls exhibit interest in each other, it is a normal and usually harmless if sometimes difficult development. When the same interest seems evident across racial lines, the spectre of rape or interracial marriage leaps into adult consciousness. And the other behaviors frequently assume different meanings and proportions for those trying to deal with unaccustomed racial situations.

Differences in Discipline After Desegregation

Recognizing these kinds of similarities between pre and post desegregation discipline, in the Charlotte-Mecklenburg experience, more often than not, our reaction to desegregation has produced striking differences in the nature of discipline problems.

Consider these items:

A. ASSIGNMENT OF PUPILS TO SCHOOLS AT GREAT DISTANCE FROM THEIR HOMES.

   1. This reduces the principals' and teachers'options in dealing with discipline problems. Any treatment that requires a pupil to stay after school is largely a thing of the past. Buses do not wait for pupils and many Black and some white pupils cannot affort private transportation or

public conveyance. Indeed, in many cases there is no public conveyance.

2. Transportation difficulties reduce especially Black pupils' participation in co-curricular activities. Since school spirit and pupils' identity with the school are built through these activities to a major degree, this is a major factor in many Black pupils' feeling that they do not belong and are not wanted. This feeling is reinforced by the fact that these same pupils' parents cannot get to school activities and do not feel a part of the parent group. Such feelings of rejection readily spawn feelings of hostility which, when acted out, become discipline problems.
3. Long bus rides are a daily adventure for some children. For others, especially hyperactive, hungry tired or upset children the long bus ride may become an intolerable confinement. The only way to deal with it is to release pent up tension through behavior that is perceived as disruptive or a hazard to other children.
4. The use of both old and new buses created a problem. In Charlotte-Mecklenburg's experience, the need for buses to provide necessary transportation was immediate and great. Delivery on new buses takes from six to eight months. The only solution lay in borrowing discarded buses from other systems, some

225 of them. Breakdowns are frequent causing buses to be late to pick up and deliver pupils. Such additions to the long ride cause tensions to mount so that a whole bus load of pupils will sometimes arrive at school looking for trouble and finding it very readily. These are segregated buses. There is no way to pick up Blacks in the suburbs or whites in the Black ghetto. When the dilapidated Black bus pulls in the lot beside a new white bus, there is resentment at Blacks being assigned an old bus. When a dilapidated white bus pulls into the lot beside a new Black bus, there is resentment at whites being assigned an old bus. No matter that old and new buses are assigned in similar proportion to Blacks and whites, discrimination is charged. The Black in the old bus charges that the Blacks always get the left-overs. The white in the old bus charges that Blacks get everything these days.

B. INSTANT CULTURAL SHOCK. Desegregation takes both races from life in segregated cultures to one third of life in a physically integrated but psychologically segregated culture.

Even though official integration of public facilities and events had caused Blacks and whites to expect to be together in some situations, the kinds of relationships which cause people to know each other as individuals and to tolerate closeness were still rare prior to 1970. Blacks and whites brought with them wide ranges of perceptions of each other developed from diverse experiences and lack of experiences, resentments toward each other bred from generations of prejudiced action, talk and thinking, and expectations of each other based on a vast ignorance of what to expect.

Probably most significant was the Black expectation that integration would be wonderful. In The Trauma of Change, Eric Hoffer theorizes that many people think the status of the poor changes because the oppressed can no longer tolerate the oppression, and thy revolt. He theorizes further that this is not the case. He believes that oppressed people tolerate oppression indefinitely unless someone calls attention to their misery. Their attention thus alerted to the possibility of a better life, they revolt. I believe the civil rights revolt and subsequent court decisions alerted many Blacks to the possibilities of integration. On a superficial level the negative possibilities were repressed, and there was widespread belief that integrated education would be better and learning would be easier and life would improve as a result. There was a naive expectation that the hoped-for results of integration would be immediate with little recognition that generations of change would be required. In this context of hope, mixed with fear, prejudice, resentment, ignorance, and unrealistic expectations, it was a simple matter for unforeseen problems to emerge.

1. A major problem arises in the differences in the ways Blacks and whites express hostility and react to hostility. Whites are more likely to use words or gestures, often subtly, - a low aside of "nigger", - a condescending expression on the face, or a pitched penny. Blacks are likely to be physical or more obviously verbal in their hostility, - a hefty shove, a left to the shoulder, loud and insulting epithets, obscenities, or a shakedown in the boys room. The whites' tactics are more acceptable or are not easily detected in school, while the Blacks' tactics are less acceptable and cannot be missed. The white frequently goes undetected and unpunished while the Black is apprehended and punished severely for behaviors that may be equally disruptive. Both Black and white pupils are conscious of this difference, and they will talk about it. And it is important for whites to know that for many Blacks, the hostility and resentment are so great that the instant release afforded by physical aggression is worth the risk of punishment.
2. Total desegregation seems to increase feelings of group identity. This factor is more crucial for the race that is in the minority in the school. In Charlotte-Mecklenburg, Blacks are in the minority by court order. Blacks had been accustomed to a

Black culture in school with recognition for achievement, academic or personal, on that culture's terms. Faced with a white majority, the haven of blackness vanishes and school life is suddenly in terms of totally alien conditions. Opportunities for recognition and the development of leadership are greatly reduced or managed, - that is fostered or guaranteed by a special procedure of some sort. This is dehumanizing and would be just as true for whites under reverse conditions, I suspect.

Friendships have generally developed within racial groups. When there is only one race, pupils are expected to group together as friends. When more than one race is involved, such natural groups become "whites" or "Blacks", and it is easy for each to suspect the other of conspiracy or at least of gossip. Communication across racial lines is discouraged.

In many cases such racial group identity encourages feelings of discrimination of Black staff against white pupils or of white staff against Black pupils.

All of these feelings which develop around "whiteness" and "Blackness" encourage tension, quick reactions, impulsive behavior, and any tendency to act first and then think. Though this is more subtle than some factors, it has a major impact on discipline problems.

3. Fear is such a large factor for whites and Blacks that it needs special consideration. Pupils and parents of both races fear going into the territory of the opposite race. School staffs of both races have the same fear; especially, husbands fear for their wives. Parents fear sending their children off on that yellow bus to enemy territory. Fear breeds uncertainty, a need for support, group identity and suspicion of those feared.
4. The feelings of fear, group identity, resentment, and frustration outlined above create conditions ideally suited to mass action. Natural leaders emerge, and the faithful follow, especially among Blacks. Any altercation is potentially a disruption. Any disruption has a potential for violence. Mass action in shcool is just as difficult to control as it is in other settings, and most school people are not equipped by training or experience to cope with it. It is difficult in several ways. It is usually unpredictable and spontaneous. It is sometimes pre-meditated with security leaks accompanied by numerous conflicting rumors. Rumors among pupils and staff are enough of a problem, but these kinds of rumors inevitably spread to parents who, in their efforts to reduce the problem, usually complicate it. In many cases large numbers of

parents seek to remove their children from the building which adds to the confusion.

Almost anything said about mass action and its unmanageablitity leads to a consideration of when, how and who else to involve in control, - school system staff such as social workers, school security forces, or law enforcement officers?

After control is established, the detective work starts. The task of identifying separately the instigators, the mere participants and the onlookers is very difficult. Because of behaviorial patterns mentioned previously, Blacks are more likely than whites to be identified. If police are involved there are the added complications of separate or conflicting evidence, the unavailability of police evidence, and the tendency toward the establishment of guilt by association or before trial.

5. When the violation of regulations is serious enough to warrant consideration of depriving the pupil of his education, even for a short time, the issue of due process is interjected. Though not directly an outgrowth of desegregation, it is more significant in the desegregated setting.

   The concept of due process, of course, is to provide the structure for carrying out due process provisions of the constitution from which children seem to have been excluded until the present. Though the concept of in loco parentis is dead, the courts have not yet defined due process adequately. But it seems likely it will include such concepts as these:

(a) A pupil is innocent until proved guilty
(b) Guilt must be established through documentation
(c) The accused has the right to face his accusers
(d) The accused has the right to a hearing at which he may present his case, perhaps represented by legal counsel or, at least, an advocate
(e) The accused has a right to a record of all proceedings
(f) A pupil deprived of his education has the right to appeal the decision through appropriate authority to the courts of the land

Indeed, there is serious question as to whether school systems will be allowed to use even a system such as this. It is perhaps likely that the right to an education will be guaranteed under any circumstances, the schools being forced to provide an education that will have meaning for every child.

Be that as it may, due process is having and will continue to have heavy impact on the handling of serious discipline problems in the schools.

C. VESTED AND ENTRUSTED POWER. Mention should be made of a further general condition brought on by desegregation or changes in pupil assignment for whatever reason. Principals generally operate under two rules of authority in varying proportions under varying conditions. One is vested power, that is, power derived from law, court decision, school board policy and administrative regulation. The other is entrusted power, that is, power derived from recognized personal competence, knowledge of pupils and their families, the trust he has built with them, his relationships with his staff, and his general standing in the community.

Under stable circumstances the competent principal is likely to operate most of the time from the strength of his entrusted power. He thinks little of the need for the backing of formal structures.

However, under uncertain or unstable circumstances, he is likely to feel less sure of his standing with pupils, staff, parents, and community. Being uncertain of the strength of his entrusted power, he is likely to fall back on his vested power. He becomes legalistic and allows less freedom in regard to pupil behavior, classroom management, curriculum content, innovation, and pupil involvement. This is dehumanizing to him, staff, and pupils, increasing the likelihood of impulsive behavior, over-reaction to controversy and potentially difficult situations, severe punishment, poor inter-personal relationships, disruptive behavior and general frustration, resentment, hostility and retaliation on the part of staff and pupils.

The Root Causes And Some Recommended Remedies

In this presentation I have reported as objectively as possible my perceptions of discipline problems as they are affected by the Charlotte-Mecklenburg desegregation process. An attempt to draw out of this reporting the basic factors leads me to the conclusion that the root causes of most behavior problems lie in inadequacies of the school system, and we try to deal with them by punishing the pupils. I think it would not be very different in most school systems. Look at these causes:

a. A curriculum that does not speak to the needs of many pupils.
b. Inflexible classroom management which demands that pupils be quiet and still, listen to the teacher, and be at the same place in the same book.
c. A pre-occupation with teaching as opposed to learning.
d. Uniform expections of pupils which largely ignore differences in basic needs, interests, motivations,

background and learning styles.

e. Failure to listen to the concerns of pupils and involve them in decision making.

f. Failure to work at the development of sound interpersonal relationships between the people who live together a third of their lives, - pupils and teachers.

g. Transportation problems.

It seems to me that the thrust of remedial efforts should be directed toward humanizing education in terms of the realities of today. This places top priority on staff development. Each system must determine its needs in this regard and plan its program carefully. I suspect most systems will see these kinds of needs:

a. Greater understanding of how to work effectively with groups of people. We have majored in telling people facts and how to do things. We are generally unskilled in involving people in processes, in communicating with each other and in using group activity toward problem solving.

b. Greater understanding of the diversity of pupils' potentials, motivations, maturity levels, and learning styles and the development of teaching styles and the development of teaching styles to match this diversity.

c. Greater understanding of the human factors which underly pupils' and teachers' ability to function.

It may sound trite now, but people who feel good about themselves and expect to succeed usually do. We must place high priority on the development of positive self concept, built on what the person already has. Why not use the the red pencil to check the right answers instead of to cross the wrong answers? Why not add a language for general use while valuing and developing the dialect necessary for communication at home?

d. A greater understanding of the educational needs of pupils and the kind of curriculum that will meet them. I cannot believe that Shakespeare and complicated concepts in physics are for everyone, nor can I believe that interesting and meaningful language study and science should be denied anyone. Consider mini-courses for greater diversity and more choices.

The other major effort should be directed at developing and using techniques for bridging the physical and psychological gaps between Black and white, rich and poor. Without this effort, Black's will be expected to adapt to the white culture, poor will be expected to adapt to rich. And neither will happen, nor should they. Each must get to know the other as individuals so that they see Mrs. Jones or Sam Smith rather than Blacks or whites. They must find out that they can work together for the common good, and that each can build respect for the culture of other. There must be carefully planned efforts in this direction within and between pupils, parents, and school staff.

CONCLUSIONS

Much of what I have said sounds negative. This is because I have tried to speak honestly to the realities of two very difficult but rewarding years. During those two years we have found that we can look at formidable difficulties as problems to be solved in methodical, rational fashion. We have seen many skeptical, frightened, unsure, and somewhat angry staff turn toward positive, creative action. We have seen a community move from almost complete obsession with the issue of busing to a widespread acceptance of realtiy and a determination to develop a quality educational opportunity for all pupils. Discipline has been a major issue throughout the process. We have found, and I hope this presentation makes it clear, that discipline cannot be separated from the total process of education.

In summary, this whole traumatic, hectic, painful effort is providing the impetus for moving education ahead by giant steps. The result is well worth whatever we have experienced.